

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

LAS VEGAS, NEVADA

In re: USA COMMERCIAL MORTGAGE ) JUNE 21, 2006  
COMPANY, ) E-Filed: 10/21/10  
)  
Debtor. ) Case No.  
) BK-S-06-10725-LBR  
\_\_\_\_\_) Chapter 11

TRANSCRIPT OF PROCEEDINGS  
OF

STATUS HEARING

RE: MOTION FOR ORDER

UNDER 11, USC, SECTIONS 105(A), 345, AND 363  
APPROVING DEBTOR'S PROPOSED CASH MANAGEMENT PROCEDURES  
AND INTERIM USE OF CASH IN ACCORDANCE  
WITH PROPOSED CASH BUDGET, NO. 8

AND

MOTION DIRECTING PAYMENTS TO DIRECT LENDERS, NO. 336

AND

ORDER SHORTENING TIME

RE: MOTION TO USE CASH COLLATERAL THROUGH JULY 29, 2006,  
PURSUANT TO SECOND REVISED BUDGET, NO. 407

AND

MOTION TO RECONSIDER, NO. 609

AND

ORDER SHORTENING TIME

RE: MOTION FOR AUTHORITY

TO FORBEAR AND TO PROVIDE FURTHER FUNDING  
FOR CERTAIN OUTSTANDING LOANS, NO. 592

AND

ORDER SHORTENING TIME

RE: MOTION FOR EMERGENCY INTERIM AND PERMANENT ORDERS  
AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING,  
NO. 588

AND

ORDER SHORTENING TIME

RE: MOTION FOR ORDER APPROVING AGREEMENT  
WITH INVESTMENT PARTNERS, NO. 575

AND

Proceedings recorded by electronic sound recording;

1 ORDER SHORTENING TIME  
2 RE: APPLICATION FOR ADMINISTRATIVE ORDER  
3 ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION  
4 AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS, NO. 570

5 AND  
6 ORDER SHORTENING TIME  
7 RE: MOTION TO REMOVE FERTITTA ENTERPRISES, INC.,  
8 AS A MEMBER OF OFFICIAL COMMITTEE OF HOLDERS  
9 OF EXECUTORY CONTRACT RIGHTS, NO. 562

10 AND  
11 ORDER SHORTENING TIME  
12 RE: APPLICATION TO EMPLOY  
13 ORRICK, HERRINGTON & SUTCLIFFE, LLP,  
14 AS COUNSEL TO THE OFFICIAL COMMITTEE  
15 OF EQUITY SECURITY HOLDERS  
16 OF USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, NO. 619

17 AND  
18 ORDER SHORTENING TIME  
19 RE: APPLICATION TO EMPLOY BECKLEY SINGLETON, CHTD.,  
20 AS SPECIAL NEVADA BANKRUPTCY COUNSEL  
21 TO THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS  
22 OF USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, NO. 622

23 AND  
24 JOINT MOTION FOR NUNC PRO TUNC ORDER  
25 CLARIFYING REQUIREMENT TO PROVIDE ACCESS TO INFORMATION,  
NO. 521

AND  
ORDER SHORTENING TIME  
RE: APPLICATION TO EMPLOY FTI CONSULTING, INC.,  
AS FINANCIAL ADVISORS NUNC PRO TUNC AS OF JUNE 9, 2006,  
NO. 659

AND  
ORDER SHORTENING TIME  
RE: APPLICATION TO EMPLOY ALVAREZ & MARSAL, LLC,  
AS FINANCIAL AND REAL ESTATE ADVISOR  
NUNC PRO TUNC TO JUNE 1, 2006, NO. 633

VOLUME 2  
A.M. SESSION  
BEFORE THE HONORABLE LINDA B. RIEGLE  
UNITED STATES BANKRUPTCY JUDGE  
Wednesday, June 21, 2006

9:00 a.m.

Court Recorder: Helen C. Smith

Proceedings recorded by electronic sound recording;

## 1 APPEARANCES:

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3 Deed Fund Committee: Orrick, Herrington & Sutcliffe  
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5 ANNE M. LORADITCH, ESQ.  
6 BRETT A. AXELROD, ESQ.  
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8 JEFFERY D. HERMANN, ESQ.  
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10 Los Angeles, California 90017

11 For the Official CANDACE C. CARLYON, ESQ.  
12 Committee of Equity Shea & Carlyon, Ltd.  
13 Security Holders 233 South Fourth Street  
of USA Capital Suite 200  
14 First Trust Deed Fund, Las Vegas, Nevada 89101  
LLC:

15 For Boise/Gowen, LLC, SUSAN WILLIAMS SCANN, ESQ.  
16 and Franklin Stratford, Deaner, Deaner, Scann, Malan  
Investment, LLC: & Larsen  
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17 Las Vegas, Nevada 89101

18 For the First Trust EVE H. KARASIK, ESQ.  
19 Deed Committee: Stutman, Treister & Glatt, P.C.  
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20 Los Angeles, California 90067

21 For the Jones Vargas JANET L. CHUBB, ESQ.  
22 Direct Lenders: Jones Vargas  
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23 Reno, Nevada 89501

## 1 APPEARANCES (Cont.):

2 For the Unsecured ROBERT CHARLES, JR., ESQ.  
3 Creditors Committee Lewis and Roca, LLP  
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Mortgage Company: Suite 600  
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5 For the Canepa LAUREL E. DAVIS, ESQ.  
6 Group: Lionel, Sawyer & Collins  
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7 Las Vegas, Nevada 89101

8 For the Official GERALD M. GORDON, ESQ.  
9 Committee of Executory GREGORY E. GARMAN, ESQ.  
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10 USA Commercial 3960 Howard Hughes Parkway  
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11 For Liberty Bank: WADE B. GOCHNOUR, ESQ.  
12 Haney, Woloson & Mullins  
13 1117 South Rancho Drive  
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14 For CapitalSource DAVID A. COLVIN, ESQ.  
15 Finance, LLC: Marquis & Aurbach  
10001 Park Run Drive  
Las Vegas, Nevada 89145

16 KENNETH J. OTTAVIANO, ESQ.  
17 Katten Muchin Rosenman, LLP  
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Suite 1600  
Chicago, Illinois 60661

19 For the United States AUGUST B. LANDIS, ESQ.  
20 Trustee: Office of the United States Trustee  
300 Las Vegas Boulevard South  
21 Suite 4300  
Las Vegas, Nevada 89101

22 For the Debtor: ANNETTE W. JARVIS, ESQ.  
23 Ray, Quinney & Nebeker, P.C.  
24 36 South State 1400  
Salt Lake City, Utah 84145

25

1 APPEARANCES (Cont.):

2 For the Debtors: LENARD E. SCHWARTZER, ESQ.  
3 Schwartz & McPherson Law Firm  
4 2850 South Jones Boulevard  
Suite 1  
Las Vegas, Nevada 89146

5 For Richard McKnight, THOMAS J. GILLOON, ESQ.  
6 Esq.: Law Office of Richard McKnight, P.C.  
330 South Third Street  
Suite 900  
7 Las Vegas, Nevada 89101

8 Also Present: ROBERT A. RUSSELL  
9 Manager  
Boise/Gowen, LLC  
Franklin Stratford Investment, LLC

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	Witness	Direct	Cross	Red.	Rec.		
1							
2	THOMAS J. ALLISON						
3	(By Ms. Jarvis)	28			120		
4	(By Mr. Gordon)		68			129	
5	(By Mr. Landis)		89				
6							
7							
8							
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11							
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25							

1	E X H I B I T S		
2	Number	Description	Page
3	Trustee's A	List of Top Creditors	103
4	Trustee's B	Beastar Loan Origination	114
5	Trustee's C	Beau Rivage Loan Origination	115
6	Trustee's D	Re: Freeway 101	116
7	Trustee's E	Re: Universal Hawaii	117
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
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23			
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1 (Court convened at 09:20:20 a.m.)

2 THE COURT: Okay. All right. On USA Commercial.  
3 Appearances, please.

4 MR. LEVINSON: Good morning, your Honor.  
5 Marc Levinson of Orrick, proposed counsel for the  
6 Diversified Trust Committee.

7 MS. LORADITCH: Good morning, your Honor.  
8 Anne Loraditch of Beckley Singleton, proposed Nevada counsel  
9 for the Diversified Trust Committee.

10 And I would note for your Honor that Brett Axelrod of my  
11 office and Jeffery Hermann of Orrick are also in the  
12 courtroom.

13 THE COURT: Okay.

14 MS. CARLYON: Good morning, your Honor.  
15 Candace Carlyon of the law firm of Shea & Carlyon on behalf of  
16 the First Trust Deed Committee.

17 MS. SCANN: Good morning, your Honor. Susan Scann of  
18 Deaner, Deaner, Scann, Malan & Larsen on behalf of Boise/Gowen,  
19 LLC, and Franklin Stratford, LLC. Robert A. Russell, the  
20 manager of those two LLCs, is also present.

21 MS. KARASIK: Good morning, your Honor. Eve Karasik,  
22 Stutman, Treister & Glatt, Professional Corporation, on behalf  
23 of the First Trust Deed Fund Committee.

24 MS. CHUBB: Good morning, your Honor. Janet Chubb of  
25 Jones Vargas for what have become to be called the

1 JV Direct Lenders.

2 (Colloquy not on the record.)

3 MR. CHARLES: Rob Charles from Lewis and Roca. We  
4 represent the Unsecured Creditors Committee of USA Commercial  
5 Mortgage Company.

6 MS. DAVIS: Good morning, your Honor. Laurel Davis  
7 appearing on behalf of the Canepa Group.

8 MR. GORDON: Gerald Gordon and Greg Garman of  
9 Gordon & Silver on behalf of the Official Committee of  
10 Direct Lenders.

11 MR. GOCHNOUR: Good morning, your Honor.  
12 Wade Gochmour of Haney, Woloson & Mullins on behalf of  
13 Liberty Bank.

14 MR. COLVIN: Good morning, your Honor. David Colvin,  
15 local counsel for CapitalSource Finance, LLC. With me is  
16 Mr. Kenneth Ottaviano who is Chicago counsel.

17 And we'd ask the Court -- we are in the process of  
18 preparing and submitting pro hac vice papers, but we would ask  
19 that he be permitted to speak this morning.

20 THE COURT: All right.

21 THE CLERK: Could you spell the other attorney's last  
22 name?

23 MR. OTTAVIANO: Yes, ma'am. It's Ottaviano,  
24 O-t-t-a-v-, as in Victor, i-a-n-o.

25 THE CLERK: Thank you.

1 MR. OTTAVIANO: Thank you.

2 MR. LANDIS: Augie Landis for the United States  
3 Trustee, your Honor.

4 THE COURT: Okay.

5 MS. JARVIS: Annette Jarvis on behalf of the debtors.

6 THE COURT: All right.

7 MR. SCHWARTZER: Lenard Schwartzer, local counsel for  
8 the debtors.

9 THE COURT: All right. I've got to make myself room  
10 to work here.

11 MR. SCHWARTZER: We've noticed we can't see over the  
12 pile, either, your Honor. Your Honor, we would have some  
13 suggestions with regard to the order of hearing these things.

14 (Colloquy not on the record.)

15 MR. SCHWARTZER: First of all, there is some  
16 uncontested applications for employment of counsel and experts  
17 for the committee.

18 We would suggest that those things go forward right off  
19 the bat, so the committee counsel know they're employed, and  
20 then they're officially counsel for the committee.

21 Then we know we have a long calendar and some time  
22 limitations, and we --

23 THE COURT: Well, I probably shouldn't tell you this,  
24 but my time-limitation problem has gone away.

25 MR. SCHWARTZER: Well, that's actually terrible

1 because I had planned this wonderful afternoon, your Honor, but  
2 I'm sure it will be wonderful here, too, but I was suggesting  
3 that there are some --

4 THE COURT: No. I don't --

5 MR. SCHWARTZER: To get --

6 THE COURT: I agree.

7 MR. SCHWARTZER: -- some order to the motions that  
8 are more substantive, we were thinking that it would probably  
9 be important to consider the motion for emergency interim and  
10 permanent DIP financing to begin with followed by the motion  
11 for authority to forbear and provide further funding and then  
12 following that with the motion to extend the budget from  
13 July 16th to some later date when the Court can consider the  
14 budget again because we have that deadline in the middle of the  
15 Court's vacation, and that would be our suggestion, your Honor.

16 So we would be talking about going to page 4. So after  
17 the applications, we would be talking about going to the motion  
18 on page 4, the first motion on page 4, then the second motion  
19 on page 3, and then the --

20 THE COURT: Well, 4 is the controversial one.

21 MR. SCHWARTZER: It sure -- yes.

22 THE COURT: I thought we were going to do the  
23 uncontested first.

24 MR. SCHWARTZER: Yeah. I would say do the  
25 applications first --

1 THE COURT: Okay.

2 MR. SCHWARTZER: -- then do the contested ones in the  
3 order that makes -- and we think the order that makes sense is  
4 the DIP financing first, then the motion to forbear --

5 THE COURT: Okay.

6 MR. SCHWARTZER: -- because part of that sort of --  
7 that solves some of the problems.

8 And the motion to forbear will solve if there is DIP  
9 financing and then, finally, the motion to extend the budget  
10 which makes more sense after we know whether there is --

11 THE COURT: Exactly.

12 MR. SCHWARTZER: -- DIP financing --

13 THE COURT: Exactly.

14 MR. SCHWARTZER: -- as well, and then --

15 THE COURT: And I'm going to take the Fertitta motion  
16 after the, quote, "uncontested" -- the employment applications  
17 because then we know who is the committee --

18 MR. SCHWARTZER: That --

19 THE COURT: -- chair.

20 MR. SCHWARTZER: I understand that. And if we don't  
21 have a time, we thought -- if we were going to run out of  
22 time --

23 THE COURT: Um-h'm.

24 MR. SCHWARTZER: -- we thought that one could be put  
25 off a month.

1 But if you're going to do that -- if we're not going to  
2 run out of time, that is an important motion to be  
3 heard --

4 THE COURT: Okay.

5 MR. SCHWARTZER: -- your Honor.

6 THE COURT: Before we start even with the  
7 applications, let me just have a brief update on where we are,  
8 schedules, the truing up, anticipated payments, and I recognize  
9 this will all fit in later, but just kind of a brief summary  
10 and a status.

11 MS. JARVIS: These schedules were filed timely last  
12 week on the 15th. There are some amendments because they are  
13 very complicated, and we're working through those, too, because  
14 there were a few mistakes or holes that we realized after they  
15 were filed that's just, you know, been a monumental process, so  
16 we're working through those.

17 The investors, (indiscernible) investors' statements,  
18 should be sent out next week. Those are the original ones that  
19 go only to the petition date.

20 They will then be updated through as close to the end of  
21 June as possible to be sent out in early July. We sent out in  
22 early July, so that is proceeding forward.

23 In addition to restating all of the investor accounts in  
24 going back and reconstructing their records, part of that  
25 process also requires restating the borrower accounts which the

1 company is in the process of doing because it went back and  
2 reconstructed, you know, the application of payments. Let me  
3 explain it this way.

4 Just as with the investors where the documents in what was  
5 to be done with respect to the lenders in, for instance, the  
6 collection of servicing fees and et cetera, the documents say  
7 one thing, but the practice in, for instance, paying the  
8 interest whether or not it was collected was something  
9 different.

10 There also is that same issue with respect to borrowers as  
11 far as the documents as to where, you know, payments are to be  
12 applied and the way it was done in the books, you know, and  
13 records.

14 So that also is being completely reconstructed to make  
15 sure that there is an accurate accounting for the payments that  
16 were made on the loans.

17 And we come out with, you know, an accurate picture of  
18 what has been paid in accordance with the loan documents, so  
19 the practice in accounting for it was different than the loan  
20 documents.

21 And Mesirov has gone back to reconstruct all of that as  
22 well, so that is also in process. I think that's close to be  
23 being completed.

24 So that we in addition to being able to give the investors  
25 an accurate account of their loans we also will have an

1 accurate account for the borrowers of the current status of  
2 their loans as well, so it's been a monumental process.

3 We do have also set for next week meetings with the four  
4 committees to start discussing plan options and also the motion  
5 that we intend to file by the 7th to distribute the funds in  
6 the Collection Account to the investors or to the lenders which  
7 we will have set in accordance with our discussion last week on  
8 August 4th, so we will begin those discussions in earnest.

9 We should have enough information to be able to sort out  
10 and deal with some of the more difficult problems in figuring  
11 out what to do with certain types of issues among the investors  
12 with respect to the distributions that should be made, and we  
13 will get to this later in dealing with the DIP motion and the  
14 cash management.

15 But with respect to the --

16 (Interruption over the telephone line at 09:28:53 a.m.)

17 THE COURT: Whatever service we're using, the call  
18 got dropped. This is one of the best we know.

19 (Colloquy not on the record.)

20 THE COURT: Again, this is our test results on what  
21 company we can and can't use I guess.

22 (Colloquy not on the record.)

23 (Telephone dialing.)

24 (Colloquy not on the record.)

25 911 OPERATOR: 911 Emergency. Robert --

1 THE COURT: Oh.

2 911 OPERATOR: -- 70672.

3 (Colloquy not on the record.)

4 911 OPERATOR: Hello, 911.

5 THE COURT: Tell her we're --

6 THE CLERK: I'm sorry. We're --

7 THE COURT: -- (indiscernible).

8 THE CLERK: We probably dialed the wrong number.

9 911 OPERATOR: Okay.

10 THE CLERK: Jeez.

11 (Colloquy not on the record.)

12 THE COURT: How did it do that?

13 UNIDENTIFIED SPEAKER: I don't know.

14 (Colloquy not on the record.)

15 UNIDENTIFIED SPEAKER: I don't know. There's no 911  
16 on there.

17 THE CLERK: No.

18 (Colloquy not on the record.)

19 THE COURT: It should be just that 91 I would think.

20 UNIDENTIFIED SPEAKER: It is 91-888-311-9051.

21 There's no 911 string in there.

22 THE COURT: Oh, so we just did it that way.

23 UNIDENTIFIED SPEAKER: It just does it  
24 (indiscernible). There's no 911 string in there.

25 (Colloquy not on the record.)

1 (Telephone dialing.)

2 ELECTRONIC VOICE: We're sorry. The number you have  
3 reached is not in service. Please --

4 (Colloquy not on the record.)

5 UNIDENTIFIED SPEAKER: One more try.

6 MR. SCHWARTZER: It was in service before --

7 (Colloquy not on the record.)

8 UNIDENTIFIED SPEAKER: Give it one more try.

9 MR. SCHWARTZER: -- your Honor.

10 THE COURT: Fine.

11 MR. SCHWARTZER: That number was in service before --

12 (Colloquy not on the record.)

13 MR. SCHWARTZER: -- earlier this morning.

14 THE COURT: Yeah.

15 UNIDENTIFIED SPEAKER: It was? It was working?

16 THE COURT: Well, I guess that company goes out of  
17 our list.

18 (Colloquy not on the record.)

19 (Telephone dialing.)

20 THE COURT: Do you know what company it was?

21 MR. SCHWARTZER: Oh, you know, maybe because we  
22 didn't pay them for the last phone call --

23 THE COURT: Oh.

24 MR. SCHWARTZER: -- they went out of business.

25 (Colloquy not on the record.)

1 ELECTRONIC VOICE: We're sorry. The number you have  
2 reached is not in service.

3 (Colloquy not on the record.)

4 UNIDENTIFIED SPEAKER: They only have one line.

5 THE COURT: Yeah. I guess that's it, yeah.

6 (Colloquy not on the record.)

7 MR. SCHWARTZER: Actually, your Honor, I'm hoping to  
8 get them as a client.

9 THE COURT: Yeah.

10 (Colloquy not on the record.)

11 THE COURT: Well, I think this Court had LDDS to  
12 start with which turned into WorldCom, so --

13 (Colloquy not on the record.)

14 THE COURT: Just for those of you who are sitting in  
15 the courtroom, we have established a phone line where people  
16 can listen in, and that's apparently what's happened is that  
17 connection's been lost.

18 MS. CHUBB: Well, I'm certainly glad I got to the  
19 airport at 5:00 o'clock --

20 THE COURT: Yeah.

21 MS. CHUBB: -- as opposed to trying to call in.

22 THE COURT: Ms. Chubb, what would you have done if  
23 you weren't able to talk, though?

24 MS. CHUBB: Oh.

25 THE COURT: See, this is a listen-in-only line.

1 MS. CHUBB: You know, it's a real quandary,  
2 your Honor. (Indiscernible) if I'm sitting here, and I  
3 (indiscernible).

4 (Colloquy not on the record.)

5 THE CLERK: Are all the parties on the line?

6 MS. CHUBB: (Indiscernible) stand by the door.

7 THE CLERK: Okay. Let me try and transfer you over  
8 to our PA system. Hold on.

9 (Colloquy not on the record.)

10 THE COURT: Okay. All right. So I guess we're back  
11 on-line.

12 (Colloquy not on the record.)

13 THE COURT: And if they can't talk, they won't be  
14 able to tell us that they're --

15 THE CLERK: It's busy.

16 UNIDENTIFIED SPEAKER: It's busy?

17 THE CLERK: I think they hung up.

18 UNIDENTIFIED SPEAKER: Try again, please.

19 THE CLERK: No. I got them, again.

20 (Colloquy not on the record.)

21 THE CLERK: It's busy, but you know what? I got  
22 ahold of them on this line.

23 UNIDENTIFIED SPEAKER: Can I dial in for  
24 (indiscernible)?

25 (Colloquy not on the record.)

1 THE COURT: How do we know we lost the call?

2 (Colloquy not on the record.)

3 THE COURT: Somebody called us?

4 UNIDENTIFIED SPEAKER: Just dial the 6647. Do a  
5 transfer.

6 THE CLERK: Um-h'm.

7 (Colloquy not on the record.)

8 (Telephone dialing.)

9 ELECTRONIC VOICE: We're sorry. Your call cannot be  
10 completed as dialed. Please check --

11 THE COURT: Mr. Schwartz, is there a number that my  
12 staff can tell your office to call the company to call?

13 MR. SCHWARTZER: The only thing I could do is have  
14 the --

15 (Colloquy not on the record.)

16 MR. SCHWARTZER: Your Honor, the only thing I could  
17 do is have your staff call my office.

18 THE COURT: Okay. So we should call your office to  
19 get that number.

20 (Colloquy not on the record.)

21 THE COURT: Okay. Thanks. All right.

22 Ms. Jarvis, I'm sorry. I interrupted you right in  
23 mid-sentence.

24 (Colloquy not on the record.)

25 THE COURT: So if you didn't like what you said, you

1 could just start over.

2 MS. JARVIS: Let's see if I can remember where I was.

3 (Colloquy not on the record.)

4 MS. JARVIS: About the distributing of the collection  
5 accounts, and we do currently have about \$80,000,000 in that  
6 account.

7 There is an issue with respect to the amounts that we  
8 collected that was what we call the prepaid interest meaning  
9 the interest that already has been paid out to investors that  
10 we now have collected back from the borrowers.

11 That amount is not going to be distributed as part of that  
12 distribution because, you know, we believe it actually is  
13 general property of the estate. There are other issues to work  
14 out.

15 And, actually, with respect to the cash-management motion,  
16 we have agreed to go forward with the DIP financing and to  
17 simply hold that money, you know, currently while we sort out  
18 these issues with respect to where it ought to go. Frankly, I  
19 think this is probably an issue that we hopefully can negotiate  
20 out in a plan of reorganization.

21 THE COURT: Okay.

22 MS. JARVIS: So, currently, that will be held.

23 THE COURT: All right. Thank you. And then remind  
24 me at the end for housekeeping issues as well as our usual  
25 practice. All right.

1           Let's then go to the application for employment of Orrick  
2           and Beckley Singleton.

3           MS. LORADITCH: Good morning, your Honor. As  
4           debtor's counsel indicated, the three employment applications  
5           that we filed, Orrick, Herrington & Sutcliffe as counsel to the  
6           Official Committee of Equity Security Holders of USA Capital  
7           Diversified Trust Deed Fund, LLC, an application by the  
8           committee to employ Beckley Singleton as Nevada bankruptcy  
9           counsel, and, also, to employ FTI Consulting, Inc., as  
10          financial advisers to the committee, all three applications  
11          were unopposed. And, in fact, we have all signatures on the  
12          proposed orders as well.

13          THE COURT: Okay. I don't have any problem employing  
14          the two law firms. Let me just caution as I've cautioned  
15          everybody else to not duplicate services. There is like five  
16          attorneys here today.

17          Perhaps, you know, it's your business judgment, and that's  
18          necessary to get a sense of what's happening in the case. But  
19          in all these fee applications, I'm going to take a look at how  
20          many attorneys were doing things, and I'm going to expect  
21          justifications for why these things happen.

22          Oftentimes, there is very good justifications for having  
23          two sets of counsel at a particular hearing because, you know,  
24          there's a need to understand the context.

25          And, for example, I have my clerks and externs sit in, so

1 that there's context. And when I say I need something, they'll  
2 know what I'm talking about and not just stare blankly at me.

3 MS. LORADITCH: No. I appreciate your comments,  
4 your Honor. And, in fact, all the professionals in light of  
5 the Court's previous comments on those subjects are very keenly  
6 aware of duplication, and we're being very careful about how  
7 we're assigning tasks and billing, and so forth.

8 But I do appreciate the comment with regard to context  
9 because as the Court is obviously aware that is important as  
10 well.

11 THE COURT: And one kind of point -- and this kind of  
12 came out in the budget, and we can discuss it later. Now, it's  
13 quite clear that you're going to be paid not from  
14 USA Commercial. You're going to be paid from the particular  
15 fund that you're representing, correct?

16 MS. LORADITCH: Correct.

17 THE COURT: Okay. And, again, we'll get to it in the  
18 budget because the budget mentions, well, we now have four  
19 attorneys to pay, but the point is that's going to be coming  
20 from USA Commercial directly, I mean.

21 MS. LORADITCH: My recollection of the budget -- and  
22 I don't have it immediately at my fingertips, but, perhaps --

23 THE COURT: I think that's been deferred.

24 MS. LORADITCH: -- debtor's counsel --

25 THE COURT: That was one of the initial things,

1 reasons for the financing, was we have four attorneys now,  
2 instead of one.

3 MS. LORADITCH: Well, I don't know about that. But  
4 on the budget, it does break out by debtor --

5 THE COURT: Okay.

6 MS. LORADITCH: -- and provides for professionals by  
7 estate.

8 THE COURT: Okay.

9 MS. LORADITCH: Your Honor, I just have a question,  
10 and I'm sorry. Go ahead.

11 THE COURT: And I was going to say as to FTI, you  
12 know, I'm a little hesitant about what's the need for your own  
13 real estate adviser, your own adviser in the context of this  
14 case, but it seems to me this is the Fund.

15 The Fund's represented by a committee. They're in the  
16 position to know what they believe is best, and I'm not going  
17 to second-guess. I presume that you have talked this through  
18 and felt that it's necessary.

19 MS. LORADITCH: We have.

20 THE COURT: Okay. So with that, I'll -- and,  
21 certainly, I have no opposition to that particular company, and  
22 it is certainly qualified.

23 MS. LORADITCH: Thank you, your Honor. One  
24 question --

25 THE COURT: Oh, I'm sorry. FTI, they're being paid

1 an hourly, correct, not -- this is not a 327 retainer basis?

2 MS. LORADITCH: That's correct.

3 THE COURT: Okay. And all the fees will be subject  
4 to review --

5 MS. LORADITCH: Correct, your Honor.

6 THE COURT: -- at the end. Okay.

7 MS. LORADITCH: That's right. With respect to the --  
8 I'm sorry. Go ahead.

9 MR. LEVINSON: I wanted to make one additional  
10 disclosure, your Honor, not to --

11 THE CLERK: Could you make your appearance, please.

12 MR. LEVINSON: Oh, I'm sorry. Marc Levinson for  
13 Orrick.

14 THE CLERK: Thank you.

15 MR. LEVINSON: I learned the other day that the  
16 debtor has sued Wells Fargo Bank on account of a postpetition  
17 transfer I believe for \$100,000. My firm also represents  
18 Wells Fargo Bank. If it's a bank, we generally represent it.

19 We do not represent Wells Fargo Bank and have not in  
20 connection with anything related to these cases, but I wanted  
21 to make sure the Court was aware of that.

22 THE COURT: Okay. All right. Thank you.

23 MS. LORADITCH: With respect to the orders,  
24 your Honor, given your schedule, is it possible that we could  
25 upload those this morning?

1 THE COURT: Everybody upload --

2 MS. LORADITCH: And then we'll --

3 THE COURT: Everybody should upload things as soon as  
4 possible.

5 MS. LORADITCH: Okay.

6 THE COURT: And on the other housekeeping matter, if  
7 you don't get them -- as long as you've got the certification  
8 that everybody signed off, even if you don't get them uploaded  
9 by Friday, they'll be signed.

10 But then it will be very important that you have  
11 everybody sign off on all the orders, so that we know they're  
12 correct.

13 MS. LORADITCH: Okay.

14 THE COURT: You do, anyway, but, you know.

15 MS. LORADITCH: Right. And we've actually collected  
16 signatures --

17 THE COURT: Okay. So upload those --

18 MS. LORADITCH: -- as of this morning, so --

19 THE COURT: -- today.

20 MS. LORADITCH: Okay.

21 THE COURT: Okay.

22 MS. LORADITCH: Thank you.

23 THE COURT: Okay. All right. So those three are  
24 approved, so that's the applications on page 6 and page 6-B,  
25 and then we have the application to employ Alvarez & Marsal.

1 MS. KARASIK: Good morning, your Honor. Eve Karasik,  
2 Stutman, Treister & Glatt, on behalf of the First Trust Deed  
3 Committee.

4 The First Trust Deed Committee seeks to employ  
5 Alvarez & Marsal as our financial adviser. We have received  
6 one comment I believe from the Unsecured Creditors Committee  
7 just admonishing us not to duplicate services among the funds  
8 between FTI and Alvarez.

9 We're very sensitive to that, and they are doing their  
10 best not to duplicate and understand their fees will be at risk  
11 in the event they do.

12 THE COURT: Okay. And, of course, the point is their  
13 fees are only paid from your particular fund's assets.

14 MS. KARASIK: Correct, your Honor.

15 THE COURT: Okay. All right. So that's approved as  
16 well.

17 MS. KARASIK: Thank you very much.

18 THE COURT: All right. Let's go to the motion to  
19 remove Fertitta from the creditors committee, and that's on  
20 page --

21 THE CLERK: 5.

22 THE COURT: -- 5.

23 MS. JARVIS: Your Honor, if I could, I would like to  
24 call Mr. Allison to the stand to provide testimony.

25 THE COURT: All right.

1 (Colloquy not on the record.)

2 THE CLERK: (Indiscernible) up here (indiscernible).

3 (Colloquy not on the record.)

4 THE CLERK: (Indiscernible).

5 MR. ALLISON: Thank you.

6 THE CLERK: Would you raise your right hand.

7 Thereupon --

8 THOMAS J. ALLISON

9 was called as a witness by the Debtor, and having been first  
10 duly sworn, testified as follows:

11 THE WITNESS: I do.

12 THE CLERK: Would you state your name and spell your  
13 last name for the record.

14 THE WITNESS: Thomas J. Allison, A-l-l-i-s-o-n.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MS. JARVIS:

18 Q. Mr. Allison, what your position with the debtors?

19 A. I'm the president and chief restructuring officer of  
20 USA Commercial Mortgage and the manager of the two funds.

21 Q. And in that capacity, have you had the opportunity to  
22 become familiar with the business records kept in the ordinary  
23 course of business of this debtor?

24 A. Painstakingly so, Ms. Jarvis.

25 Q. And either you or your staff under your direction has

1 thoroughly gone through the records of this debtor?

2 A. Yes, we have.

3 Q. Okay. Let me show you what I will have marked as  
4 Exhibit A.

5 (Colloquy not on the record.)

6 THE COURT: Have those been marked, already, you're  
7 giving to the witness?

8 MS. CARLYON: Did you make copies for everyone?

9 MS. JARVIS: I only have the copies that we got to  
10 show, you know, up on the (indiscernible). I apologize for  
11 that.

12 THE COURT: We need a copy for the witness, though --

13 MS. JARVIS: Okay.

14 THE COURT: -- and to be marked.

15 MS. JARVIS: Well --

16 THE COURT: I know.

17 MS. JARVIS: Yeah. Can he --

18 THE COURT: But the clerk has to mark it, and --

19 MS. JARVIS: Okay. But let me have it marked, and  
20 then can I have it back again to show?

21 THE COURT: Okay.

22 MS. JARVIS: I apologize.

23 THE CLERK: Do you want me to go make copies, Judge?

24 THE COURT: No. That will take time.

25 THE CLERK: Okay.

1 MS. JARVIS: Thank you.

2 THE CLERK: It will be Exhibit 1.

3 (Debtor's Exhibit No. 1 was marked  
4 for identification.)

5 MS. JARVIS: Thank you. Okay. Exhibit 1.  
6 (Colloquy not on the record.)

7 THE CLERK: There you go.

8 MS. JARVIS: Thank you.

9 BY MS. JARVIS:

10 Q. Let me show you what's been marked as Exhibit 1. Do you  
11 recognize this document?

12 A. Yes, I do.

13 Q. And does --

14 THE COURT: A or 1?

15 MS. JARVIS: Just a minute. It's --

16 THE COURT: You said A.

17 THE CLERK: No. She said --

18 THE COURT: You mean 1?

19 THE CLERK: She said 1.

20 MS. JARVIS: She said 1 because this --

21 THE COURT: Okay.

22 MS. JARVIS: Your clerk told me I was to mark it --

23 THE COURT: Right.

24 MS. JARVIS: -- with 1.

25 THE COURT: Okay.

1 MS. JARVIS: So I --

2 THE COURT: Um-h'm.

3 MS. JARVIS: -- was obeying instructions.

4 THE COURT: Okay.

5 BY MS. JARVIS:

6 Q. And does this come from the business records of the debtor?

7 A. Yes, it does.

8 Q. And was this business record kept in the ordinary course of  
9 the debtor?

10 A. Yes. This record reflects the loan participants in the  
11 interest rate in the Hasley Canyon loan.

12 Q. And I noticed on the far right hand there is a notation of  
13 the interest rate that is paid for each investor; is that  
14 correct?

15 A. That's correct.

16 Q. This is a document that is kept internally at the debtor's?

17 A. Yes. The exhibit up until the interest rate is part of the  
18 Exhibit A. The calculate -- the interest rate is the interest  
19 rate calculated to be paid each month to the investors on the  
20 transaction.

21 Q. So this would have been kept internally, but it would not  
22 have been the Exhibit A that was publicly filed with the deed  
23 of trust; is that correct?

24 A. The -- it would be filed up until the interest rate --

25 Q. Yeah. Okay.

1 A. -- the -- the last column.

2 Q. So in other words, the way it would be filed -- let me just  
3 put my hand over it. It would be filed as if

4 (indiscernible) --

5 A. That's correct. The interest-rate column --

6 Q. -- without that --

7 A. -- is hidden.

8 Q. -- without that last column.

9 A. Yes.

10 Q. So no one would have publicly seen that interest rate.

11 A. That's correct.

12 Q. Can you identify on there Fertitta Enterprises as an  
13 investor?

14 A. Yes.

15 Q. And can you identify the interest rate that they were paid  
16 on this loan.

17 A. 18 percent.

18 Q. And from your review of this, was there any other investor  
19 in this loan that was paid 18 percent?

20 A. No.

21 THE CLERK: Is this (indiscernible) 2?

22 MS. JARVIS: This is the exhibit it came off. This  
23 is Exhibit 2.

24 (Colloquy not on the record.)

25 (Debtor's Exhibit No. 2 was marked

1           for identification.)

2           BY MS. JARVIS:

3           Q.    Let me show you what's been marked as Exhibit 2. Do you  
4           recognize this document?

5           A.    Yes, I do.

6           (Colloquy not on the record.)

7           BY MS. JARVIS:

8           Q.    And was it kept in the -- or is it from the business  
9           records of the debtor?

10          A.    Yes, it is.

11          Q.    And it's kept in the ordinary course of those records.

12          A.    That's correct.

13          Q.    Okay. And what is this document?

14          A.    This is the participants -- the list of investors in the  
15          Tapia Ranch investment. The last column is the interest rate  
16          paid to the investors.

17          Q.    And, again, this column when it was publicly filed with the  
18          deed of trust, that last column of the interest rate would not  
19          have been on the list; is that correct?

20          A.    That's correct.

21          Q.    Okay. Can you identify Fertitta Enterprises as an investor  
22          in this loan?

23          A.    Yes, I can. They have a \$5,000,000 investment.

24          Q.    It's about a third of the way down the page?

25          A.    That's correct.

1 Q. And can you identify the interest rate that they were paid  
2 on this.

3 A. 13 percent. The remaining investors are all paid  
4 12-and-a-half percent.

5 Q. Now, have you gone through the payment records that exist  
6 at the debtor with respect to these loans?

7 A. Yes, I have.

8 (Dialing interruption at 09:47:50 a.m.)

9 BY MS. JARVIS:

10 Q. And in reviewing those payments records, was  
11 Fertitta Enterprises actually paid the higher interest rate in  
12 both of these loans?

13 A. Yes, they were.

14 Q. And was any other investor paid or was any other investor  
15 paid that higher interest rate --

16 A. No. The --

17 Q. -- in these loans?

18 A. The interest that was paid by the borrower to the debtors  
19 was the either 13 percent or 18 percent depending upon the  
20 loans, so that what you -- what you saw in the other two  
21 transactions were the service fees being deducted.

22 They were no service fees deducted on the Fertitta loan.  
23 They were paid. They were paid what we -- what USA Commercial  
24 Mortgage received as an interest payment.

25 Q. Let me show you. Let me have marked --

1 THE COURT: I'm sorry. Say that over again. What  
2 about the service rate?

3 THE WITNESS: The -- on -- on the -- on -- on each of  
4 the loans, there was a -- on the loan that Fertitta was  
5 18 percent, USA Commercial Mortgage received 18 percent from  
6 the borrower as an interest rate.

7 It paid off -- it paid to the balance of the individuals  
8 17 percent keeping a one-percent service fee on the  
9 transaction.

10 The -- on -- on the second transaction where the interest  
11 rate was at 13 percent, Commercial Mortgage kept a  
12 50-basis-point service fee on -- on the transaction.

13 In both transactions, what was collected by -- by  
14 USA Commercial Mortgage was a pass-through to  
15 Fertitta.

16 BY MS. JARVIS:

17 Q. So on both of these loans, no servicing fee was paid by  
18 Fertitta.

19 A. That's correct.

20 Q. Okay. And, in fact, have you reviewed the other loans that  
21 are outstanding with Fertitta?

22 A. Yes.

23 Q. In any of those cases, did Fertitta pay a servicing fee?

24 A. No.

25 Q. So in all of those cases, it was never charged a servicing

1 a fee.

2 A. That's correct.

3 MS. JARVIS: Let me just for an example just have  
4 marked as Exhibit 3 --

5 (Colloquy not on the record.)

6 MS. JARVIS: -- so that we can see how this is kept  
7 with respect to the payments made, so I'm going to have these  
8 marked as Exhibit 3.

9 (Colloquy not on the record.)

10 (Debtor's Exhibit No. 3 was marked  
11 for identification.)

12 MS. JARVIS: Okay.

13 BY MS. JARVIS:

14 Q. Do you recognize this document?

15 A. Yes. This is a payment summary of -- that would go to  
16 Fertitta each month. This is prepared internally by the  
17 company to lay out the investment, the original investment, the  
18 net ending balance, and the interest you paid year-to-date.

19 Q. And these are kept in the ordinary course of business of  
20 the debtor?

21 A. Yes.

22 Q. And they are generated in the ordinary course?

23 A. That's correct.

24 Q. And this is the investment statement for Fertitta?

25 A. That's correct.

1 Q. Okay. Can you identify the two loans that we were just  
2 talking about on this statement.

3 A. Sure. Hasley Canyon is the original investment of  
4 \$3,000,000 with an interest rate of 18 percent, and you'd have  
5 to move up in the -- and you have to move to the \$5,000,000  
6 transaction which is Tapia Ranch.

7 Q. Okay. And these payment summaries show that with respect  
8 to Tapia Ranch 13 percent is actually paid to Fertitta on this  
9 loan; is that correct?

10 A. That's correct.

11 Q. And with respect to Hasley Canyon, 18 percent was actually  
12 paid?

13 A. That's correct.

14 Q. I've combined these as Exhibit 3. There are several  
15 together. Let me just pull out for an example, then.

16 (Interruption over the telephone line at 09:52:01 a.m.)

17 BY MS. JARVIS:

18 Q. Is this --

19 MS. CARLYON: I'm sorry.

20 BY MS. JARVIS:

21 Q. Can you identify this document?

22 A. Yes. This --

23 THE COURT: Hang on a second.

24 MS. CARLYON: I'm sorry to interrupt. Just for the  
25 benefit of everyone who's trying to follow along, it seems

1       like --

2               THE COURT RECORDER: Could you speak right directly  
3 into the microphone, Counsel, please?

4               MS. CARLYON: I'm sorry.

5               THE COURT RECORDER: Thank you.

6               MS. CARLYON: Candace Carlyon for the First Trust  
7 Deed Fund. It appears that the exhibits that we have marked so  
8 far, part of this one, were actually exhibits to the debtor's  
9 original motion.

10              MS. JARVIS: That is correct. Either to the original  
11 motion or the supplemental declaration.

12              MS. CARLYON: It appears that the document that we're  
13 looking at now may be Exhibit B to Mr. Allison's supplemental  
14 declaration that was filed yesterday.

15              MS. JARVIS: But --

16              MS. CARLYON: Could we have counsel just identify the  
17 documents by where we have them, so we can follow along?

18              MS. JARVIS: Yes. I can do that.

19              THE COURT: And on the phone, what -- are we having  
20 problems again or all those noises are --

21              THE CLERK: As soon as we mute it, then we lose  
22 contact with (indiscernible). I don't (indiscernible).

23              THE COURT: Okay.

24              MS. JARVIS: Okay.

25       BY MS. JARVIS:

1 Q. Can you identify this document.

2 A. Sure. This is the account statement of Donna Cangelosi --

3 Q. And --

4 A. -- on --

5 Q. Oh, go ahead.

6 A. And it reflects her investments, for example, the -- her  
7 investment -- her return on -- on the transaction, well --

8 Q. And --

9 A. On the Hasley Canyon transaction, her return was  
10 17 percent.

11 Q. Okay. And so this demonstrates that while she was paid  
12 17 percent Fertitta was paid 18 percent on this same loan; is  
13 that correct?

14 A. Correct.

15 Q. I'm going to show you just another. This is also -- is  
16 this also a loan summary --

17 A. Yes --

18 Q. -- of another --

19 A. -- it is.

20 Q. -- investor?

21 A. That's correct.

22 Q. And this investor is also in Hasley Canyon; is that  
23 correct?

24 A. That's correct, and his interest, his interest rate, is  
25 17 percent.

1 Q. If I pulled out other such loan summaries on these two  
2 loans, from your review of these loans, would those loan  
3 summaries show that with respect to the actual payments that  
4 Fertitta was paid the higher interest rate in both the  
5 Hasley Canyon loan and the Tapia Ranch loan, and that no other  
6 investors were paid that higher rate?

7 A. That's correct.

8 (Colloquy not on the record.)

9 (Debtor's Exhibit No. 4 was marked  
10 for identification.)

11 BY MS. JARVIS:

12 Q. Can I show you what has been marked as Exhibit 4. Can you  
13 identify this document.

14 A. Yes, I can. This is the offering summary that would have  
15 been made -- that an investor in each -- in this transaction  
16 would have received.

17 This is a Hasley Canyon Loan Company, LLC. It describes  
18 the investment. It -- it describes the loan amount, the  
19 interest rate, the maturity, and it further -- further down, it  
20 will describe the collateral and the appraisal of the property.

21 Q. And so from your review -- this is the solicitation  
22 document for Hasley Canyon -- is this the only solicitation  
23 document that you have found in the files of the debtors?

24 A. This is the only solicitation document I found in the file  
25 of -- of the debtor.

1 Q. And what rate does it identify for investors?

2 A. 17 percent.

3 Q. Okay. Let me show you what's been marked as Exhibit 5.

4 Can you identify this document.

5 A. Sure. This is the loan-offering document for USA Capital  
6 used to raise \$22,000,000 at an interest rate of 12.5 percent  
7 on the Castaic Partners property.

8 MS. CARLYON: I'm sorry. What exhibit is that --

9 MS. JARVIS: These --

10 MS. CARLYON: -- in the various documents --

11 MS. JARVIS: These --

12 MS. CARLYON: -- on file?

13 MS. JARVIS: These were not attached. These are new  
14 exhibits, so these were not previously attached.

15 BY MS. JARVIS:

16 Q. Go ahead. Sorry.

17 A. And this is the -- the borrowers, Castaic Ranch. This is  
18 also known as Tapia Ranch and which is mentioned under the name  
19 of the project.

20 It was a loan amount of \$22,000,000, and the investors  
21 that -- we solicited the -- the company solicited the investors  
22 at a net rate of 12.5 percent.

23 Q. And is this the only solicitation document that you have  
24 found with respect to -- and this is actually the Tapia Ranch;  
25 is that correct?

1 A. That's correct.

2 Q. It's Tapia Ranch is the name it's known by, but the  
3 borrower actually is identified --

4 A. It doesn't --

5 Q. -- as --

6 A. Can --

7 Q. -- Castaic Partners?

8 A. That's correct.

9 Q. But it's the same loan.

10 A. Yes.

11 Q. And is this the only solicitation document that you've  
12 found in your review of the records with respect to  
13 Tapia Ranch?

14 A. Yes.

15 (Colloquy not on the record.)

16 (Debtor's Exhibit No. 6 was marked  
17 for identification.)

18 BY MS. JARVIS:

19 Q. Let me show you what has been marked as Exhibit 6, and this  
20 was marked as Exhibit E to the declaration of Mr. Bullard. Do  
21 you recognize this document as the exhibit that you reviewed  
22 attached to Mr. Bullard's declaration?

23 A. Yes.

24 Q. Have you conducted or have you asked your staff to conduct  
25 a search of the debtor's records with respect to this document?

1 A. Yes. We were not able to find it.

2 Q. Okay. So prior to having seen this attached to  
3 Mr. Bullard's declaration, you had never seen this document.

4 A. No.

5 Q. And it doesn't exist from your search in the records of the  
6 debtor.

7 A. No. I actually had my staff complete a -- pull a complete  
8 -- complete file of loan offerings, and we were not able to  
9 retain -- we were not able to find this particular transaction.

10 Q. Okay. Now, does this look like the solicitation document  
11 that I just showed you with respect to Hasley Canyon?

12 A. Yes. But there's a different -- there's a couple  
13 differences on it. Besides the interest rate being different,  
14 the amount of principal is different. And if you read on, the  
15 loan to value is slightly different as well.

16 (Colloquy not on the record.)

17 (Debtor's Exhibit No. 7 was marked  
18 for identification.)

19 BY MS. JARVIS:

20 Q. Let me show you what I've had marked as Exhibit 7, and this  
21 actually was marked as Exhibit A to the declaration of  
22 Mr. Bullard.

23 A. This shows a list of individual investors in -- in the  
24 transaction which shows Fertitta at \$1,000,000 as you can see.  
25 There are other investors listed as well such as the --

1 THE COURT: Which transaction? I'm sorry. Did you  
2 ask that question, yet?

3 MS. JARVIS: No.

4 THE COURT: Oh.

5 BY MS. JARVIS:

6 Q. Can you identify which transaction is this? Is this the  
7 Tapia Ranch --

8 A. I believe this is --

9 Q. -- transaction?

10 A. -- Tapia Ranch. That's correct.

11 Q. And this actually is the way that the Exhibit A or that  
12 this document would be attached to a deed of trust; is that  
13 correct?

14 A. That's correct without the interest-rate line visible.

15 Q. So this is the way it would be recorded and available for  
16 public viewing.

17 A. That's correct.

18 Q. Now, have you reviewed the declaration of Mr. Bullard and  
19 the response filed by Fertitta in this case?

20 A. Yes, I have.

21 Q. And did you recognize the argument that was made that there  
22 were a higher interest rate paid because of the large amounts  
23 that was invested by Fertitta?

24 A. Yes. I recognize the argument.

25 Q. When you look at this -- and did you review, then, this

1 document with respect to the loan-document files as they are  
2 kept in the ordinary course of business of the debtor?

3 A. Yes, I did. And, actually, when I -- when I read the issue  
4 with respect to having a premium pricing for putting a large  
5 block of money in, it's fairly obvious that Mr. Scott Canpana  
6 (sic) who is the next person on the list has \$700,000  
7 individually invested into the Tapia Ranch transaction.

8 Q. And did you review what interest rate Mr. Canepa was paid  
9 with respect to this transaction?

10 A. He was paid at the -- he was paid the lower interest rate.

11 MS. DAVIS: Excuse me, your Honor. Laurel Davis on  
12 behalf of Scott Canepa.

13 THE COURT RECORDER: I'm sorry. You need to be a  
14 little bit closer to the microphone, please.

15 MS. DAVIS: Laurel Davis on behalf of Scott Canepa.  
16 I'm very sorry to interrupt, but I believe there's a mistake.  
17 Mr. Canepa does not have an investment in Tapia. He has an  
18 investment in Hasley Canyon.

19 MS. JARVIS: Oh, and this --

20 THE WITNESS: Ms. Davis --

21 MS. JARVIS: Yeah.

22 THE WITNESS: -- he does have an investment in --  
23 I've verified it.

24 BY MS. JARVIS:

25 Q. But she --

1 MS. DAVIS: In Tapia.

2 BY MS. JARVIS:

3 Q. I think she's clarifying that we're talking about Hasley --  
4 I got confused. We're talking about Hasley Canyon --

5 A. Yes.

6 Q. -- not about Tapia.

7 A. Hasley Canyon.

8 THE COURT: So this is Hasley Canyon.

9 THE WITNESS: Yes.

10 MS. DAVIS: Yes.

11 MS. JARVIS: Yeah. Hasley Canyon. Right. So  
12 let's --

13 MS. DAVIS: And the --

14 MS. JARVIS: -- correct that.

15 MS. DAVIS: The exhibit was misidentified as Tapia.

16 MS. JARVIS: Yes.

17 THE COURT: Thank you.

18 MS. JARVIS: Yes. Let me correct that  
19 identification.

20 BY MS. JARVIS:

21 Q. This is Hasley Canyon; is that correct?

22 A. Yes.

23 Q. So with respect to -- so have you looked at the payments  
24 that would have been made or the interest rate that would have  
25 been paid to Mr. Canepa in this loan?

1 A. Yes.

2 Q. And was it paid at the same rate or a lower rate than the  
3 Fertitta Enterprises?

4 A. Lower rate.

5 (Colloquy not on the record.)

6 (Debtor's Exhibit No. 8 was marked  
7 for identification.)

8 BY MS. JARVIS:

9 Q. Let me show you what's been marked as Exhibit 8, and this  
10 was Exhibit E to your original declaration. Do you recognize  
11 this document?

12 A. Yes.

13 Q. And --

14 A. Yes.

15 Q. And did this document come from the business records kept  
16 by the debtor in the ordinary course of business?

17 A. Yes.

18 Q. And what is this document?

19 A. This document is -- is the agreement between USA Commercial  
20 Mortgage and the Los Valles Land Development Company. This is  
21 the -- the exit fee that was negotiated by the -- with the  
22 borrower and Fertitta Enterprises sharing in that -- in that  
23 exit fee.

24 Q. And Los Valles Land & Gold, LLC, what is that also known  
25 as? Is that also the Hasley Canyon?

1 A. Yes, I believe so.

2 Q. Yeah. So this would be related to the Hasley Canyon loan  
3 that we just discussed.

4 A. That's correct.

5 Q. Okay. Were there any other investors in that transaction  
6 that received part of the exit fee?

7 A. No.

8 Q. And, in fact, in reviewing the books and records of the  
9 debtor, are you aware of any other investors or lenders who  
10 received agreements sharing the exit fee with the debtor?

11 A. No. The exit fees were an important part, component of the  
12 revenue, to USA Commercial Mortgage, and there -- there is only  
13 two instances where we saw a sharing of the exit fee with an  
14 individual investor, the -- the two transactions we're going to  
15 talk about.

16 Q. In fact, the second transaction -- let me show you what's  
17 been marked as Exhibit 9, and this was I believe Exhibit F to  
18 your original declaration. Do you recognize this document?

19 A. Yes.

20 Q. And was it also kept in the ordinary course of business in  
21 the debtor's business files?

22 A. Yes, it was.

23 Q. And can you identify this document and explain what it is.

24 A. Yes. This is again an agreement to share the exit fee on  
25 this transaction.

1 Q. And --

2 A. And it's sharing 22.7 percent of the exit fee of  
3 one percent with Fertitta Enterprises.

4 Q. Okay. And let me just clarify the highlighting on these is  
5 actually not the way they were in the ordinary course. That  
6 was actually my markings on that to make it easier to read; is  
7 that correct?

8 A. That's correct.

9 Q. Okay. Was there any other investor in this loan or do you  
10 have any evidence that any other investor in this loan was  
11 allowed to share in the exit fee?

12 A. No. No other investor was.

13 Q. Okay. Last week, you were here in the courtroom; is that  
14 correct?

15 A. Yes.

16 Q. And did you hear counsel for Fertitta with respect to the  
17 arguments made on the motion for relief from stay that was  
18 filed on behalf of Fertitta?

19 A. Yes, I did.

20 Q. Okay. And is it consistent -- is it your understanding  
21 that the position taken by Fertitta is that with respect to --  
22 well, let me first ask a foundational question. Have you  
23 reviewed the various loans that Fertitta is in?

24 A. Yes, I have.

25 Q. And on some of those loans, were they paid interest that

1 was not yet collected from the borrowers?

2 A. In every loan.

3 Q. Okay. And that's what we would have referred to as the  
4 overpayments, the interest --

5 A. That's correct.

6 Q. -- overpayments.

7 A. The -- the net overpayment position for Fertitta is  
8 approximately 1.5 million dollars.

9 Q. Among the various loans.

10 A. Yes.

11 Q. Okay. And, in fact, in your -- let's just go back and  
12 explain this. In your declaration, you explained that with  
13 respect to the books and records of the company before Mesirow  
14 reviewed those books and records the amount that was shown to  
15 be owing was 2.1 million --

16 A. That's correct.

17 Q. Is that correct?

18 A. That's correct.

19 Q. And that as of last week is what you thought was owing back  
20 on this overpaid interest.

21 A. That's correct. That was due to the statements. As we've  
22 -- as we've continued to work within the company, one of the  
23 things that we've done is gone back and -- and have gone to the  
24 four walls of each note.

25 And -- and as -- as payments have come in under the notes,

1 sometimes, they've been styled as principal payments while --  
2 while there is interest owing.

3 Under the -- under the -- under the note -- under the  
4 notes the way they're structured, the payments should be first  
5 applied to interest and then to principal.

6 So what that did was create a -- by -- by applying  
7 payments that were styled as being applied to principal to --  
8 it reduced the amount of outstanding interest by -- by paying  
9 down the -- by making a proper accounting of what should have  
10 been paid down under each of the notes.

11 Q. And so because the borrowers' statements are being  
12 restated, that then reflects back on restatement of the  
13 investors' statement; is that what --

14 A. That's correct.

15 Q. -- you're saying?

16 So the difference between the 1.5 million that you're  
17 testifying today and the 2.1 is as a result of these redoing of  
18 the borrowers' statements which then impacts the investors'  
19 statements.

20 A. That's correct.

21 Q. And, in fact, in your declaration that was filed yesterday,  
22 at that point, I think it states that it's around  
23 500-and-something thousand.

24 A. Right.

25 Q. Can you explain --

1 A. And we --

2 Q. -- that number.

3 A. We're continuing to work -- we were continuing to work and  
4 on -- on this account up until the time of filing, and we found  
5 another payment that -- that was -- was improperly recorded.

6 And that changed it from 500 -- the \$500,000 level,  
7 approximately, to the million-five, so it's about a  
8 million-five that was over -- that was an overpayment.

9 Q. Does that million-five also include servicing fees that  
10 were never collected from Fertitta?

11 A. Well, there were no servicing fees collected from Fertitta,  
12 period.

13 Q. So would that be included in that 1.5 or could that be in  
14 addition to the 1.5?

15 A. The -- the interest rate was a pass-through. What we  
16 collected from the borrower was 18 percent, and what we paid to  
17 Fertitta was -- or what we -- what we accrued on our books is  
18 18 percent more precisely so because in most instances we  
19 hadn't collected that money, and that was a pass-through to  
20 Fertitta.

21 MS. JARVIS: Okay. Let me --

22 (Interruption over the telephone line at 10:10:39 a.m.)

23 (Colloquy not on the record.)

24 (Debtor's Exhibit No. 10 was marked  
25 for identification.)

1 BY MS. JARVIS:

2 Q. Did you go through the -- or did you personally or did you  
3 direct your staff to go through the business records of the  
4 debtor to look for a loan-servicing agreement with Fertitta?

5 A. I directed my staff to do that.

6 Q. Okay. And let me show you what's been marked as  
7 Exhibit 10. I'll show you, and this has not previously been  
8 marked as an exhibit.

9 This is the front page of it, and I just show that, so you  
10 can see how it's held in the ordinary course. The second page  
11 is this. It was stapled together. Do you recognize this  
12 document?

13 A. Yes. This would be a loan-servicing agreement.

14 Q. With --

15 A. And this is one that was entered into between  
16 USA Commercial Mortgage and Mr. -- Mr. Fertitta and  
17 Mr. Fertitta's Family Trust.

18 Q. Okay. And there are several of these relating to the  
19 Fertitta entities, right, related entities?

20 A. That's correct.

21 Q. So this is an example of one of them, but there are other  
22 loan-servicing agreements as well?

23 A. Yes.

24 Q. Okay. And this document by the way was found and kept in  
25 the ordinary course of business of the debtors?

1 A. That's correct.

2 (Interruption over the phone line at 10:12:20 a.m.)

3 (Colloquy not on the record.)

4 BY MS. JARVIS:

5 Q. Let me show you or refer you -- this is in the same  
6 document -- to paragraph No. 4. Can you identify that  
7 paragraph.

8 A. That's the compensation for -- to USA Commercial Mortgage  
9 for its loan-servicing fee which is one quarter of one percent.

10 Q. And none of this was ever -- from the review you've done to  
11 the records -- and I think you've gone back to 2003 by now; is  
12 that correct?

13 A. That's correct.

14 Q. There have been no servicing fees that have been paid --

15 A. That's correct.

16 Q. -- by Fertitta or any of the Fertitta entities.

17 A. That's correct.

18 Q. Let me go back, then, to where we started before I laid  
19 this foundation reminding you of being in court last week and  
20 listening to the counsel for Fertitta who was arguing a motion  
21 for relief from stay on behalf of Fertitta.

22 Is it your understanding from not only what was -- well,  
23 is it your understanding that it is Fertitta's position that  
24 with respect to the 1.5 million that he has been overpaid that  
25 when those amounts are collected from the borrowers that

1 Fertitta is also entitled to that second collection of that  
2 interest?

3 A. Yes.

4 Q. So in other words, it's your understanding that Fertitta is  
5 taking the position that it is entitled to be paid for that  
6 interest twice.

7 A. That's correct.

8 Q. And you've had no conversations with Mr. Bullard that would  
9 lead you to believe differently.

10 A. No.

11 Q. Okay. If in this instance -- so is it your understanding  
12 that Fertitta's position is that with respect to the  
13 1.5 million -- and you're saying on every single loan they have  
14 an overpaid amount -- that it's their position that the only  
15 way this could be collected is by suing them?

16 MR. GORDON: Your Honor, I'm going to object.  
17 There's no evidence of that is that --

18 THE COURT RECORDER: I'm sorry, Counsel.

19 MR. GORDON: -- to sue.

20 THE COURT RECORDER: Could you speak --

21 THE COURT: Well --

22 THE COURT RECORDER: -- into the microphone?

23 THE COURT: -- you need to be speaking at a  
24 microphone.

25 And if the question is what statements he made, that would

1 be an admission. So if that's the question -- so yeah. You  
2 can only ask him about the statements that were made to him.

3 BY MS. JARVIS:

4 Q. Was the statement made to you by Mr. Bullard that would  
5 confirm your understanding that with respect to the overpayment  
6 of the interest that the only way to collect that in Fertitta's  
7 view would be to sue them?

8 A. Not to me directly, but I've heard that through --

9 MR. GORDON: I'm going to object, your Honor, as  
10 hearsay.

11 MS. JARVIS: Yeah.

12 THE COURT: Sustained.

13 MS. JARVIS: Yeah.

14 BY MS. JARVIS:

15 Q. Let me just ask you. If the loans were pulled, if relief  
16 from stay had been granted on the Fertitta loans, do you  
17 believe it would increase the difficulty of recovering back the  
18 overpaid interest --

19 A. Yes.

20 Q. -- and, also, getting paid any unpaid servicing fees --

21 A. Yes.

22 Q. -- that relate to years past?

23 Based on your analysis of the records that you and your  
24 staff has done to date, how many direct investors are there?

25 A. Approximately, 3600 direct investors.

1 Q. And how many of those -- based on what you know to date,  
2 can you estimate how many of those direct investors may have  
3 had diverted principal, the group that we consider to be  
4 underpaid?

5 A. A substantial number of them.

6 Q. Would it be in the hundreds?

7 A. No. In the thousands.

8 Q. Yeah. And is it a greater number than you had originally  
9 anticipated?

10 A. Yes.

11 Q. And what did you find that revised your estimate of that?

12 A. As -- as we've gone through transaction by transaction, we  
13 originally saw three deals, three transactions, that had  
14 diverted principal.

15 As we've delved -- you've delved into the books and  
16 records, we've uncovered a substantial number of other  
17 transactions that, you know, either were misrepresented on the  
18 books and records and should have been written off and over a  
19 period of time that weren't collected or where the principal  
20 had been diverted partially.

21 Q. And do you have any estimate today -- I think the original  
22 estimate you gave was around \$50,000,000 in this category. Is  
23 the amount higher than that --

24 A. Oh.

25 Q. -- based on your current knowledge?

1 A. Our current estimate is it continues to be around  
2 50,000,000. But as we continue to work on the amounts of  
3 shortfall, that -- the number -- the amount of shortfall is  
4 growing in -- in -- in excess of \$50,000,000.

5 THE COURT: 50, did you say?

6 THE WITNESS: 5-0 million.

7 BY MS. JARVIS:

8 Q. Let me then just lastly go back to the servicing-fee issue.  
9 Have you or your staff reviewed as part of going through the  
10 investor reconciliations reviewed issues with respect to  
11 servicing fees that are paid by each investor --

12 A. Yes.

13 Q. -- including direct investors?

14 A. Yes.

15 Q. Based on your review, are you aware of any other investor,  
16 direct investor, who did not pay a servicing fee or a servicing  
17 fee was not collected from in the course of business of this  
18 debtor?

19 A. No.

20 MS. JARVIS: Thank you.

21 That's all I have, your Honor.

22 THE COURT: Before I have cross, would you explain  
23 the exit fees and how that works in any particular transaction.  
24 Obviously, the documents speak for themselves, but I don't have  
25 the advantage of having --

1 THE WITNESS: Sure.

2 THE COURT: -- the whole contract.

3 THE WITNESS: Your Honor, the exit fees are part of  
4 the -- the way that USA Commercial Mortgage operates its  
5 business, it -- it basically generated its revenue from fees.

6 Origination fees on the fund end of a transaction, those  
7 origination fees could be up to -- up to ten basis points of  
8 the transaction.

9 And exit fees on the back end of the transaction and the  
10 exit fees on the back end of the transaction were a principal  
11 source of revenue for the company.

12 THE COURT: Now, do you mean when the loan was paid  
13 off?

14 THE WITNESS: When the loan --

15 THE COURT: Is that when they're due?

16 THE WITNESS: -- was paid off. Essentially, what  
17 they were charging was a success fee --

18 (Interruption over the telephone line at 10:18:47 a.m.)

19 THE WITNESS: -- at the end of the transaction.

20 THE COURT: Okay. And to whom are those fees paid --

21 THE WITNESS: In -- in all --

22 THE COURT: -- as between the borrower and USA.

23 THE WITNESS: The --

24 THE COURT: And then we'll go into USA and this other  
25 side or how did this all work?

1 THE WITNESS: The -- the borrower at the -- at -- at  
2 the closing -- at the paying off of a loan, the borrower would  
3 pay to USA Commercial Mortgage a success fee.

4 The success fees in several -- in some transactions are --  
5 are a percentage point. Some are profit sharing. Some are --  
6 some are a fixed dollar amount.

7 But those fees were part of the revenue base of USA -- a  
8 significant part of the revenue base of USA Commercial  
9 Mortgage.

10 So that at -- at -- at the closing of a transaction and  
11 the net payoff, it would pay off the principal balance plus any  
12 -- the accrued interest, any -- any other types of fees which  
13 may have been an extension fee as well as the exit fee which  
14 would have been another fee that would have been -- been  
15 payable at -- at the consummation of a transaction.

16 THE COURT: And what you're saying is the documents  
17 -- under these documents, Fertitta gets a portion of those  
18 fees, but not all the fees.

19 THE WITNESS: No. There was a -- it was a  
20 fee-sharing arrangement between Fertitta and -- and  
21 USA Commercial Mortgage.

22 THE COURT: Okay. Okay. Thanks.

23 You can see why I said that it's a good thing I have my  
24 clerks here, so they don't stare blankly because I can't ask  
25 questions, and I can't explain things well, so they need to

1 hear for themselves, so --

2 MS. JARVIS: Well, I should have done a better job of  
3 having him explain it --

4 THE COURT: No, no.

5 MS. JARVIS: -- to you --

6 THE COURT: That's fine.

7 MS. JARVIS: -- your Honor.

8 THE COURT: All right. Let's take a short recess,  
9 and then we'll do cross. I'm not clear where we're -- I assume  
10 the U.S. Trustee's Office is doing cross --

11 MR. LANDIS: Oh, yes.

12 THE COURT: -- and Mr. Gordon.

13 And, you know, I would think that the lenders' committees  
14 would have the right to since their constituency, in essence,  
15 is -- since the lenders are the direct -- the funds are  
16 participants in some of those mortgages.

17 They may have an interest in it whether or not you do or  
18 not, but I would certainly understand if you did. All right.  
19 So let's take about a five-minute break and let you get your  
20 questions together --

21 (Colloquy not on the record.)

22 THE COURT: -- and then proceed.

23 THE CLERK: All rise.

24 (Recess at 10:21:05 a.m.)

25 (Court reconvened at 10:44:15 a.m.)

1 THE CLERK: Bankruptcy court is now in session.

2 (Colloquy not on the record.)

3 THE COURT: Okay. Be seated.

4 (Colloquy not on the record.)

5 THE COURT: All right. Additional appearances.

6 MR. GILLOON: Thomas Gilloon, your Honor, on behalf  
7 of the McKnight 2000 Family Trust.

8 THE COURT: Okay.

9 MR. GILLOON: I spoke with Ms. Jarvis concerning our  
10 motion that's on calendar for today, also. We have agreed to  
11 continue that until August 4th --

12 THE COURT: Okay.

13 MR. GILLOON: -- when the hearing will be held on the  
14 other.

15 She indicated to me that the interest that's being  
16 earned in the Collection Account is going to be held until that  
17 time.

18 THE COURT: Yes. Is that correct, Ms. Jarvis?

19 MS. JARVIS: That is correct.

20 THE COURT: All right. So that motion --

21 MR. GILLOON: Thank you --

22 THE COURT: -- is --

23 MR. GILLOON: -- your Honor.

24 THE COURT: -- the motion --

25 THE CLERK: Could --

1 THE COURT: -- on --

2 THE CLERK: Could you tell me which motion that that  
3 is?

4 MS. JARVIS: It's the first. I think it's the first.  
5 It was the first -- it was the first matter on the calendar  
6 today. I think it's the motion of Richard McKnight.

7 MR. GILLOON: Yes.

8 THE COURT: The second page --

9 MR. GILLOON: Or --

10 THE COURT: -- or at page 2.

11 THE CLERK: Page 2?

12 THE COURT: Yes.

13 THE CLERK: Directing the --

14 THE COURT: The motion directing.

15 THE CLERK: Okay.

16 THE COURT: Okay?

17 MR. GILLOON: And that's August 4th at 9:30 or  
18 9:00 o'clock?

19 THE COURT: 9:30, I guess.

20 MR. GILLOON: Thank you --

21 THE COURT: Thank you.

22 MR. GILLOON: -- your Honor.

23 MR. BENINCASA: Jasper Benincasa --

24 THE COURT: Okay.

25 MR. BENINCASA: -- representing myself.

1 THE COURT: All right.

2 THE CLERK: You --

3 THE COURT: Thank you.

4 THE CLERK: You have the matter --

5 MR. BENINCASA: Thank you, your Honor.

6 THE CLERK: -- on page 3.

7 THE COURT: Yes. I understand. Okay.

8 Before we start on this phone problem, let me task the  
9 Holders of Executory Contract Interest Committee -- I must  
10 admit if you did that in an acronym it sort of sounds like --

11 (Colloquy not on the record.)

12 THE COURT: The acronym sounds like Antonio Banderas  
13 in Shrek II playing Puss in Boots.

14 (Colloquy not on the record.)

15 THE COURT: Anyway, let me task that committee with  
16 solving this phone problem. A review of the bidding -- and I  
17 don't think Mr. Gordon was here --

18 THE CLERK: (Indiscernible).

19 THE COURT: -- the government has finally --

20 THE CLERK: Mr. Gordon is here.

21 THE COURT: No. He wasn't here when we had --

22 THE CLERK: Oh, I'm sorry.

23 THE COURT: -- this discussion.

24 THE CLERK: I'm sorry.

25 THE COURT: Wasn't here.

1 He wishes he wasn't here now, but --

2 (Colloquy not on the record.)

3 THE COURT: The government has allowed us to use one  
4 of four phone systems to do conference calls. Now, we  
5 presently have a system we can use, Sprint.

6 But what happens with our Sprint system is it gets billed  
7 to the government, and I'm a little reticent to impose the  
8 costs, the costs of phone calls, on all the taxpayers.

9 And, also, it impacts our budgets directly because  
10 there's less money in the sky for us to do the things we need  
11 to do, so I think it's more appropriate to use the system in  
12 which the people who use the phone system pay.

13 So the government has authorized four separate companies  
14 which can be used and purportedly have the technical expertise  
15 to do this.

16 However, before we can sign up any of those companies, we  
17 have to go through this process by which we say that they're  
18 the best because either they're the cheapest or there's -- it  
19 meets the -- they don't have technical problems.

20 (Interruption over the telephone line at 10:47:05 a.m.)

21 THE COURT: Well, we can't do that, and they refuse  
22 to let us just do Court Call because we can't say that the  
23 other phone companies don't work. And, of course, you can't do  
24 that until you've had the system, and the system failed.

25 So I'll task Mr. Gordon. I've given you a list. I don't

1 care which company, but then, again, if the committee picks a  
2 phone system that takes out of the government's procurement  
3 problem.

4 And the only reason I'm tasking Mr. Gordon is it's mainly  
5 your constituents that would like to be on the phone. It's not  
6 cheap, but then, again, the way we're doing it now it's being  
7 borne by all the debtors which may be all right, too. But the  
8 other way, these various Court Call systems charge back, and  
9 they take care of everything.

10 And we're apparently having problems with the company  
11 Mr. Schwartz's office has selected, so, you know, any  
12 particular -- and I'm not saying there's any problem with what  
13 he selected. You never know until you get on these phone calls  
14 what's going to work or not.

15 But let me just task that back to you for the next  
16 hearing. You get a whole month to figure that out if you don't  
17 mind.

18 MR. GORDON: We'll take on that task. Obviously,  
19 we'll work with the debtor in terms of the cost and that type  
20 of thing. As I understand, it's 100 portals. Is that what the  
21 Court is --

22 THE COURT: We never --

23 MR. GORDON: It's what's --

24 THE COURT: -- know.

25 MR. GORDON: We never know, but we've set up up to

1 100 portals. Obviously, that gets very expensive because we've  
2 dealt --

3 THE COURT: Especially --

4 MR. GORDON: -- with that before.

5 THE COURT: -- with all these hours, so that's  
6 something to discuss and hope -- you know, you --

7 MR. GORDON: We'll work it out.

8 THE COURT: You may decide that, you know, that --  
9 well, again, if everybody pays their own way, then, certainly,  
10 they can be on.

11 You may decide you want to go to that system, so that the  
12 estate is not bearing that cost. And, again, with these  
13 five-hour hearings, it gets very expensive. But by the same  
14 token, people -- you know, it's good for them to be able to  
15 listen, so --

16 MR. GORDON: I appreciate that, your Honor.

17 THE COURT: All right. So cross-examination of  
18 Mr. Allison.

19 And I don't know if anybody's on the phone now. We've  
20 been losing the calls. We attempted to switch phone companies.  
21 We can't do that this late minute.

22 And so they're just going to -- unfortunately, we're just  
23 in a position where they may or may not be able to listen to  
24 what's going on today.

25 MR. GORDON: Good morning, Mr. Allison.

1 THE WITNESS: Good morning, Mr. Gordon. How are you?

2 MR. GORDON: Fine. How are you?

3 THE WITNESS: Good.

4 (Colloquy not on the record.)

5 CROSS-EXAMINATION

6 BY MR. GORDON:

7 Q. Mr. Allison, let's take a look at what's been --

8 THE COURT RECORDER: Mr. Gordon, I'm sorry. Could  
9 you move the microphone --

10 MR. GORDON: No.

11 THE COURT RECORDER: -- directly towards you?

12 THE COURT: Ooh --

13 MR. GORDON: Sorry.

14 THE COURT: -- and I'm sorry. I didn't necessarily  
15 mean for you or Mr. Landis to go first. It doesn't make a  
16 difference I assume?

17 MR. LANDIS: If Mr. Gordon's ready, your Honor --

18 THE COURT: Okay.

19 MR. LANDIS: -- let's just keep --

20 THE COURT: That's fine.

21 MR. LANDIS: -- the ball rolling.

22 (Colloquy not on the record.)

23 BY MR. GORDON:

24 Q. Let's take a look at what's been marked as Exhibit 10, and  
25 this is a loan-servicing agreement, an LSA, and I believe it's

1       dated June 29, 1996?

2       A.     That's what it says.

3       Q.     And where did you obtain this?

4       A.     From our -- from the files of USA Commercial Mortgage.

5       Q.     And were there other loan-servicing agreements in the  
6       files?

7       A.     Yes.

8       Q.     Were there later ones?

9       A.     For various -- I'm not sure what you mean --

10      Q.     Well --

11      A.     -- by later ones.

12      Q.     -- later-dated ones, ones that were dated later on.

13             THE COURT:   For whom?

14      BY MR. GORDON:

15      Q.     For Mr. Fertitta or signed by Mr. Bullard,  
16      Fertitta Enterprises.

17      A.     I don't recall, but I -- I believe this is what we had, and  
18      we pulled -- when we pulled the file out, this is what we  
19      found.

20      Q.     And this is dated 1996. Do you know if this complies with  
21      the statutory changes to NRS 645 that were done in 1999?

22      A.     I don't have a factual basis on that.

23      Q.     Okay. And this is signed by Frank J. Fertitta, Trustee.

24             (Interruption over the telephone line at 10:50:28 a.m.)

25      BY MR. GORDON:

1 Q. Do you know if of the -- if we look at the second page, you  
2 see Frank J. Fertitta and Victoria K. Fertitta Family Trust by  
3 Frank J. Fertitta, Trustee. Do you know if this is applicable  
4 to Fertitta Enterprises?

5 A. It was in the Fertitta Enterprises file, Mr. Gordon.

6 Q. Okay. And were there other -- I just want to make it  
7 clear. Were there other loan-servicing agreements in the  
8 Fertitta Enterprises file?

9 A. You know, on a loan-by-loan basis, there would have been  
10 one for other -- for other transactions as well.

11 Q. Were there ones for the Tapia loan?

12 A. There would have been a loan-servicing agreement for each  
13 of the loans.

14 Q. Do you have the loan-servicing agreement for Tapia with you  
15 today?

16 A. I don't believe that I do.

17 Q. Do you have the loan-servicing agreement for Hasley with  
18 you today?

19 A. I don't believe that I do.

20 Q. Do you know if those two loan-servicing agreements are the  
21 same as this Exhibit 10?

22 A. They would have been very similar.

23 Q. Do you know if they're the same?

24 A. I can't say for certainty today that they're the same. But  
25 in reviewing loan-servicing agreements for, virtually, all the

1 companies -- for all the loans, they're very similar.

2 Q. Your counsel directed you to paragraph 4 of this  
3 document --

4 A. That's correct.

5 Q. -- which says that the annual servicing fee is in the sum  
6 of one quarter of one percent.

7 A. That's correct.

8 Q. Is that the same loan-servicing fee that was applicable to  
9 Tapia?

10 A. No. There -- there -- in each of the loans, there were  
11 various loan-servicing fees, Mr. Gordon.

12 Q. Okay. Now, the Court asked you a couple of questions with  
13 regard to the exit fee. Is it my understanding with regard to  
14 the exit fee that it is earned by USA Capital Mortgage when all  
15 the principal and interest has been paid to the direct lenders?

16 A. Yes.

17 Q. And until they have received all their principal and  
18 interest, and servicing fees are taken out by USA Capital, then  
19 that's when the exit fee applies.

20 A. Yes, sir.

21 Q. And it's also my understanding that the percentage set  
22 forth in the two loan-servicing fees that were identified,  
23 Exhibits 8 and 9 -- this is Exhibit 8 -- that the percentage  
24 being paid to Fertitta Enterprises, Inc., is its percentage of  
25 the actual loan. It's equivalent to the percentage of the

1 loan.

2 A. That's correct.

3 Q. Okay. And it has no rights to receive a portion of the  
4 loan-servicing fee until USA Capital is entitled to receive a  
5 percentage of the loan-servicing fee (sic).

6 A. You mean the exit loan --

7 Q. Yeah. I'm sorry.

8 A. -- exit fee.

9 Q. The exit. I apologize.

10 A. It's a loan exit fee, Mr. Gordon, and --

11 Q. Yes.

12 A. And it has the same rights as USA Commercial Mortgage as --  
13 as a co-lender would.

14 Q. And the same applies with regard to Exhibit 9 loan  
15 transaction --

16 A. Yes.

17 Q. -- the same --

18 A. The same exit fee.

19 Q. -- the same exit. Mr. Allison, you were in court last  
20 week, were you not?

21 A. Yes.

22 Q. And you've also had occasion to review both the motion  
23 filed by your counsel on your behalf to remove  
24 Fertitta Enterprises from the committee as well as the reply  
25 filed a couple days ago?

1 A. Yes.

2 (Interruption over the telephone line at 10:54:47 a.m.)

3 BY MR. GORDON:

4 Q. And you agreed with the statements contained in the reply.  
5 You read it. You agree with it, correct?

6 A. Yes.

7 Q. If you had had a disagreement, you would have requested  
8 that the statement be changed.

9 A. That's correct. When I -- when I read the reply and when  
10 -- and you -- actually, that's when I noticed the difference  
11 between the -- the loan-solicitation agreement because we don't  
12 have one of those. We don't have that particular  
13 loan-solicitation document in our file.

14 Q. Okay. On page 4, let me read to you what's quoted in  
15 paragraph 2 of the reply starting at line 10. "Although USA  
16 has not completed its investigation of Fertitta's connections  
17 with USA's former management, it is apparent that the  
18 willingness of USA's former management to pay elevated interest  
19 rates to Fertitta was not based solely on the amount of funds  
20 direct lenders invested in the loans?"

21 (Interruption over the telephone line at 10:55:55 a.m.)

22 THE COURT: I'm sorry. Please, we're on a -- this is  
23 a listen only, so please put yourself on mute.

24 MR. GORDON: One of the things that can be done with  
25 the phone system is make it listen only.

1 THE COURT: Well, unfortunately, we tried that, but  
2 the problem was it cut everybody off.

3 MR. GORDON: Okay.

4 THE COURT: You know, your government dollars at  
5 work, you know.

6 MR. GORDON: We'll try to do it in the private sector  
7 at half the price. How's that?

8 (Colloquy not on the record.)

9 THE COURT: Just don't use --

10 BY MR. GORDON:

11 Q. Let me again --

12 THE COURT: -- the USA Commercial model.

13 BY MR. GORDON:

14 Q. Let me read that to you again. "Although USA has not  
15 completed its investigation of Fertitta's connections with  
16 USA's former management, it is apparent that the willingness of  
17 USA's former management to pay elevated interest rates to  
18 Fertitta was not based solely on the amount of funds direct  
19 lenders invested in the loans." What investigation is ongoing?  
20 Can you explain that to us.

21 A. There's been a close relationship between Mr. -- or what --  
22 what Mr. Milanowski has reported to me is a close relationship  
23 between him and Mr. Bullard.

24 As a matter of fact before -- before Mr. Bullard -- before  
25 the -- the company filed for Chapter 11, Mr. --

1 MR. GORDON: Move to strike that the answer is not  
2 responsive, your Honor. I asked him what investigation.

3 THE COURT: Okay. Sustained.

4 BY MR. GORDON:

5 Q. What investigation again have you started?

6 A. Discussions with previous -- with the previous management.

7 Q. And do you have any declarations from previous management  
8 with regard to that?

9 A. No, I do not.

10 Q. And when was the last time you had those discussions with  
11 previous management?

12 A. Over -- a week ago.

13 THE COURT: Somebody must be in a submarine. Please,  
14 everybody put your phones on mute that's listening in.

15 THE CLERK: Maybe they're taking a shower.

16 BY MR. GORDON:

17 Q. Are there any documents that you have or you've discovered  
18 which would indicate an apparent willingness to pay elevated  
19 interest rates to Fertitta was not based solely on the amount  
20 of funds that direct lenders invested in the loans?

21 A. Outside of the relationship that Mr. Milanowski said he had  
22 with Mr. Bullard, no.

23 Q. The loan rate stated in the note for the Hasley loan was  
24 18 percent, correct?

25 A. Yes.

1 Q. Fertitta Enterprises received 18 percent, correct?

2 A. That's correct.

3 Q. The other investors received 17 percent, correct?

4 A. That's correct.

5 Q. And USA Capital was entitled to one percent as a service  
6 fee.

7 A. Right. There was a difference between 18 and 17.

8 Q. Tapia, the interest rate was 13 percent in the note.

9 A. That's correct.

10 Q. The servicing fee was one point.

11 A. The servicing fee was a half a point.

12 Q. Half a point in Tapia.

13 A. That's correct.

14 Q. Okay. The note applicable to all of the Tapia investors  
15 stated 13 percent.

16 A. 13 percent less the servicing fee. That's correct. As a  
17 matter of fact, the solicitation document, it said  
18 12.5 percent.

19 Q. Is there any document that you've discovered in the files  
20 which would indicate why USA Capital paid 18 percent to  
21 Fertitta with regard to Tapia and 13 percent to Hasley, instead  
22 of the 17 and the 12.5?

23 A. No.

24 Q. So you have no evidence today to explain why.

25 A. No. Just the fact that it exists.

1 Q. All right. Now, let me put up what's been marked as  
2 Exhibit 3, and this sets forth the five loan transactions in  
3 which Fertitta is a direct lender; is that correct?

4 A. Yes.

5 Q. With regard to the Brookmere/Matteson, do you know what the  
6 total outstanding loan, original loan balance, of that loan  
7 was?

8 A. I don't have the records on it at the moment. I'm sorry,  
9 Mr. Gordon.

10 Q. Do you know if Fertitta was the largest investor in that  
11 loan?

12 A. I don't -- I can't say that --

13 Q. Okay.

14 A. -- off the top of my head, sir.

15 Q. All right. With regard to Colt Gateway, do you know what  
16 the original loan balance or loan amount was?

17 A. No, I don't, but I do know on Colt Gateway they were the  
18 largest investor.

19 Q. Okay. Hasley, they're the largest investor.

20 A. That's correct.

21 Q. Marlton Square, were they the largest investor?

22 A. I don't know that.

23 Q. And Tapia?

24 A. They were the largest investor.

25 Q. Okay. Now, over in the far right corner, it says amount

1 paid, and it says year-to-date interest 11,169.32, and then  
2 below that it shows interest payments for 02/01, 2006, 02/28,  
3 2006, of \$3,363.69 and \$81.61.

4 If you add those two numbers up, the total is just around  
5 \$3450, so what is represented by the difference between the  
6 year-to-date interest of 11,169.32 and those two numbers?

7 A. I'd have to go through the math and go through the math on  
8 what the -- what the deductions are.

9 Q. But it would be fair to assume, is it not, that what's  
10 missing here since this is through February 28th, and this  
11 appears to be a February statement that the difference was paid  
12 as interest in January?

13 A. From -- essentially, yes.

14 Q. Okay. Now, so if we go down to Hasley Canyon, we have a  
15 year-to-date interest of 138,735, correct --

16 A. Correct.

17 Q. -- of which 43,162 was paid in February --

18 A. February.

19 Q. -- it appears?

20 A. Correct.

21 Q. Now, what would be the one-percent service charge on the  
22 138,735?

23 A. It would be -- it would be -- if it was one -- if it was a  
24 one-percent service charge, it would be one-twelfth of  
25 one percent charged each month.

1 Q. That's right. So, in essence, wouldn't it be 138,753  
2 divided by 18? Since it's 18 percent, it would be one percent,  
3 so you divide the 138 by 18, and one-eighteenth of it would  
4 represent the service charge.

5 A. Or -- or -- or -- or one percent of the --

6 Q. Right.

7 A. -- of the balance which would be one -- one percent of  
8 the --

9 Q. Either way, what would approximately -- and I'm not trying  
10 to test your math skills. But just to give the Court a sense  
11 for what we're talking about --

12 A. Correct.

13 Q. -- how much would that be?

14 A. I think you are testing my math skills. If -- if you just  
15 take the -- take the principal balance of -- beginning  
16 principal balance of \$1,000,000, and one percent per annum  
17 would be \$100,000. And if you divide \$100,000 by twelfths,  
18 that would be the amount of -- that would be the -- the amount  
19 each month.

20 Q. Okay. About \$8,000 or about --

21 A. Right.

22 Q. -- 16,000 total, 17,000. And on Tapia, the 162, it would  
23 be half-a-percent service fee, correct?

24 A. Correct.

25 Q. So it would be just around \$5,000.

1 A. Right.

2 Q. Okay. So were there any payments made after February on  
3 any of these loans?

4 A. No.

5 Q. So we're talking about in 2006 somewhere around a  
6 difference based on the service fee of about 17-, \$18,000.

7 A. Yes.

8 Q. Okay. I'm a little bit confused, and I appreciate your  
9 explaining again. Last week, the statement was made that the  
10 Fertitta Enterprises was overpaid about 2.1 million. And in  
11 your declaration dated June 20, it states 588.

12 Now you said based on a further review --

13 A. Sure.

14 Q. -- it's 1.5. Can you explain again for me the difference  
15 between the 588 and the 1.5.

16 A. Sure. Mr. Gordon, it -- one of the things that we're doing  
17 as -- as I share -- as -- as Ms. Jarvis shared with the Court  
18 is we're going through and doing T-accounts on all of these  
19 transactions.

20 And one of the things that we've done in terms of -- it --  
21 it's been a recreation process because as payments were made on  
22 -- on various loans they were styled as principal payments  
23 wherein in the note the note basically said it just applied --  
24 it should have been applied first to interest.

25 So what we've -- what essentially has happened is the

1 amount of interest has -- the amount of interest that would be  
2 -- that was overpaid has gone down by the interest payments as  
3 we've properly applied them according to the note, and the  
4 balance of the principal of the note has gone up.

5 The difference in -- in the transactions whereas we were  
6 going through and preparing for today the -- and going through  
7 the -- going through the transactions, the \$500,000 that we  
8 reported earlier when we went back to 2003, we found a  
9 \$1,000,000 payment that we -- that should have been -- that was  
10 -- that was styled as principal which should have been applied  
11 to interest.

12 So that -- that's -- essentially, that's where we -- we --  
13 we've gone through, and I could have to -- I'd walk you through  
14 the math on all of the transactions --

15 Q. No. That's fine.

16 A. -- to do it.

17 Q. Let me just get the principal down. So a payment was made  
18 by the borrower of \$1,000,000, correct?

19 A. Right.

20 Q. And on that borrower's ledger on that loan, it had a  
21 principal balance say of \$2,000,000 and an interest accrual of  
22 1.2 --

23 A. To --

24 Q. -- million dollars.

25 A. To -- to -- to be simple, let -- let's just take a

1 hypothetical transaction. The borrower had made a payment. He  
2 had a \$100 loan, made a \$10 payment. It -- it owed -- it -- it  
3 owed on -- it owed \$50 in interest, and it had \$100 of  
4 principal. It made a \$10 payment.

5 It put on it -- it's styled on its note that \$10 -- this  
6 is -- I'm -- I'm paying \$20, \$10 to interest and \$10 to  
7 principal.

8 Since he was owed 50 -- he owed \$50 of interest, that  
9 money should have been first applied to interest as opposed to  
10 applying \$10 to interest and \$10 to principal.

11 And, unfortunately, with the -- what company -- company's  
12 management did was not enforce the terms of the note and took  
13 the -- took the payment instructions from the borrower at face  
14 value and applied it \$10 to interest and \$10 to principal.

15 Q. Applying the principal to a principal decreases the amount  
16 of principal which increases the accrued interest going  
17 forward.

18 A. Correct.

19 Q. Okay. But what did not happen was in that instance the  
20 money came from another borrower and was misapplied to a  
21 different loan. It's a calculation on the loan itself.

22 A. That's correct.

23 Q. It's a correction on the loan itself.

24 A. That's correct.

25 Q. So as of this time, that \$1,000,000 is a loan adjustment

1 that needs to be made amongst that loan itself.

2 A. That specific loan. That's what we're doing --

3 Q. Okay.

4 A. -- on a loan-by-loan basis.

5 Q. Okay. That doesn't mean that Fertitta or any of the other  
6 lenders on that loan that you're talking on those loans owe  
7 money to someone else.

8 A. There -- there were -- essentially, on each of the Fertitta  
9 loans, they -- they were in a net -- they're in a position  
10 where they have been paid more interest than we've collected.

11 Q. But, ultimately, the balance due on the loan is the same --

12 A. That's correct.

13 Q. -- because it's principal and interest.

14 A. That's correct.

15 Q. Actually, they've been harmed, haven't they, because by  
16 applying it to the principal -- and so has USA Capital been  
17 harmed because by applying it to principal they've reduced what  
18 would be the normal interest accrual on a going-forward basis.

19 A. That's correct.

20 Q. And that would relate to your servicing fees, too.

21 A. That's correct.

22 Q. There's no evidence that this was only done for the benefit  
23 of Fertitta. It was done as to the loan itself.

24 A. It was done -- it was done systematically, and that's why  
25 we're -- we're recreating the books to accurately reflect the

1 -- the due-tos and due-froms.

2 Q. Okay. So that's an adjustment that needs to be made.

3 A. Yes.

4 Q. So how do we get that Fertitta owes 1.5 million dollars?

5 A. When we've gone through each of the -- when we've gone  
6 through each of the notes, and we've -- and we looked at what  
7 we paid out in interest versus what we've collected in interest  
8 from the borrowers, Mr. -- the Fertitta net position is  
9 1.5 million dollars in overpayment of -- in -- in being paid  
10 interest that -- that USA Commercial Mortgage did not collect.

11 Q. So when you adjust it, you're going to take their  
12 principal, increase it by the 1.5, and decrease the amount of  
13 interest paid, so their interest goes up.

14 A. Correct.

15 Q. So the borrower owes Fertitta -- I'm sorry. Strike that --  
16 owes Fertitta more principal and less interest.

17 A. Correct.

18 Q. You testified that of the 3600 direct lenders a substantial  
19 number have been underpaid.

20 A. That's correct.

21 Q. How many of those lenders have been overpaid?

22 A. A number have been overpaid on -- on the nonperforming  
23 loans where the interest was continued to --

24 Q. Oh, do you have --

25 A. -- what --

1 Q. Do you have an estimate of how many hundreds of direct  
2 lenders have been overpaid?

3 A. We're -- we're working through the final number on that. I  
4 gave Ms. Jarvis an estimate, and it's in the thousands, and I  
5 -- I -- I would hold that as an estimate.

6 Q. And to the extent that Fertitta owes service fees on its  
7 18-percent interest and its 13-percent interest because those  
8 were not deducted from it, that's money that's owed to  
9 USA Capital Mortgage.

10 A. That's correct.

11 Q. And that could be adjusted as payments are received going  
12 forward, can it not?

13 A. Potentially, yes, it could.

14 Q. Yeah. Let me read paragraph 47 from your fifth  
15 declaration, the one that was just filed. "For the reasons  
16 stated above, based on my business judgment as the  
17 chief restructuring officer of these debtors and of USACM, in  
18 particular, Fertitta does not adequately represent the interest  
19 of the direct lenders who are the true creditors of USACM  
20 because their principal repayments were diverted prepetition  
21 and who have the most to lose or gain by the success of the  
22 debtor's reorganization efforts." Who are you referring to as  
23 the true creditors of USACM?

24 A. The individual -- Mr. Gordon, the individual investors  
25 where their collateral has been diverted where the -- where the

1 -- they have -- the loan has been paid off, the collateral is  
2 released, and they are a true unsecured creditor.

3 Q. Okay. We're talking about the sold-out, the ones who had  
4 USA Capital Mortgage receive payments, released the deed of  
5 trust, the note's paid off, and they never saw their money.

6 A. That's correct.

7 Q. Okay. They have no collateral left.

8 A. Their collateral was released.

9 Q. They're purely unsecured.

10 A. The borrower paid the --

11 Q. Okay.

12 A. The borrower repaid the loan. He had a -- he had his liens  
13 released, and the money was never paid back to those investors.

14 Q. Okay. Do you know who the U.S. Trustee composed the  
15 Executory Contracts or I call the Official Committee of  
16 Direct Lenders who it composed that committee of?

17 A. A series of direct lenders.

18 Q. Are any of those direct lenders true creditors?

19 A. I believe that Terry is.

20 Q. On one loan.

21 A. Yes.

22 Q. On the rest of the loans, he's a direct lender.

23 A. Yes.

24 Q. So isn't the statement that Fertitta does not adequately  
25 represent the interests of direct lenders who are true

1 creditors of USACM also apply to everyone else on that  
2 committee save except for Mr. Helms wearing one arm?

3 A. It -- it does, but, Mr. Gordon, where I was going is that I  
4 really feel that, you know, people that have a stake in the  
5 reorganization of the company should be represented on that  
6 committee.

7 Q. And doesn't that really mean, Mr. Allison, that what you're  
8 really asking the U.S. Trustee to do or the Court to do is to  
9 address that issue because I agree with you.

10 Those people are not represented on any committee at this  
11 time, and either expand this committee or add them to the  
12 Unsecured Creditors Committee?

13 A. Either solution.

14 Q. Either solution.

15 A. But I do think that they need to be -- they need to have a  
16 voice.

17 Q. I agree. And how much are there?

18 A. As I said, there -- there is about 50 -- if you do them in  
19 dollar amounts, about \$50,000,000 worth of dollars that need to  
20 -- need to -- should have a voice.

21 Q. The last number I heard was 35.

22 A. Well --

23 Q. So it's up --

24 A. -- what's --

25 Q. -- to 50?

1 A. It -- there's \$50,000,000 of collateral that's been  
2 diverted in -- in total.

3 MR. GORDON: Your Honor, I have no further questions.  
4 I firmly agree --

5 THE COURT: Okay.

6 MR. GORDON: -- with you, Mr. Allison --

7 THE COURT: All right.

8 MR. GORDON: -- on that point.

9 THE COURT: Mr. Landis.

10 (Colloquy not on the record.)

11 THE COURT: Well, there he is bringing the code out  
12 again.

13 MR. LANDIS: Sometimes, it helps, Judge. If you  
14 wouldn't mind leaving them right there --

15 (Colloquy not on the record.)

16 MR. LANDIS: -- that would be fine.

17 Good morning, Mr. Allison.

18 THE WITNESS: Good morning, Mr. Landis.

19 MR. LANDIS: It hasn't gotten to afternoon, yet, huh?

20 THE WITNESS: We're getting close.

21 MR. LANDIS: A lot of the stuff I would have covered,  
22 Mr. Gordon has asked you. I'm going to try to be brief. Fair  
23 enough?

24 THE WITNESS: Thank you.

25 CROSS-EXAMINATION

1 BY MR. LANDIS:

2 Q. How many members are on the Direct Lenders Committee?

3 A. I believe seven.

4 Q. Okay. Who are they?

5 A. Oh, I can't give you all their names off the top of my  
6 head. Terry -- I -- I have spoken with -- with Terry on  
7 several occasions. I met with him last night. I have  
8 spoken to Ned Homfeld on -- on -- on a couple of  
9 occasions.

10 There are other members I've met face to face, but,  
11 frankly, I haven't spoken to them. I -- I can't remember their  
12 names off the top of my head, and, obviously, Mr. Bullard.

13 (Colloquy not on the record.)

14 BY MR. LANDIS:

15 Q. Mr. Bullard is in the courtroom, isn't he?

16 A. Yes, he is.

17 MR. LANDIS: Mr. Bullard, will you stand up for me,  
18 please.

19 BY MR. LANDIS:

20 Q. You talked about Terry. Who's Terry?

21 A. Terry Helms. He's No. 2 and No. 3.

22 MR. LANDIS: And, Terry, is he here?

23 MR. HELMS: Yes.

24 MR. LANDIS: Can you stand up for me, too.

25 BY MR. LANDIS:

1 Q. Homfeld, Inc., or Homfeld, LLC, --

2 A. Ned --

3 Q. -- Edward Homfeld, is that --

4 A. Ned Homfeld, I believe he's in -- in Detroit today.

5 Q. Okay.

6 A. He called me yesterday with a 313 area code.

7 Q. How about Arthur Polacheck (phonetic), have you talked to  
8 him?

9 A. No. I try to return as many calls as I can in a day.

10 MR. LANDIS: All right. Is Mr. Polacheck out there?

11 Not so far.

12 BY MR. LANDIS:

13 Q. How about Dennis Flier, Inc., Defined Benefits Trust? Have  
14 you met Dennis?

15 A. I've met him at a committee meeting, sir.

16 MR. LANDIS: Dennis, are you here? I know the answer  
17 to the last one, except for you can't see it.

18 BY MR. LANDIS:

19 Q. Jim McCollum, do you know Mr. McCollum?

20 A. No, not personally.

21 MR. LANDIS: Mr. McCollum, I know you're here. Are  
22 you here? Stand up for me.

23 BY MR. LANDIS:

24 Q. You'd agree with me that these are pretty important folks  
25 in connection with the administration of these cases, right?

1 A. Absolutely.

2 Q. It's good to meet them, isn't it?

3 A. Yep.

4 MR. LANDIS: Thank you. You can have a seat.

5 (Interruption over the telephone line at 11:17:34 a.m.)

6 BY MR. LANDIS:

7 Q. You indicated in response to some testimony from Mr. Gordon  
8 that there were some folks that had been overpaid and some  
9 folks that had been underpaid, right?

10 THE COURT: I'm sorry.

11 Somebody's on the line talking to somebody else at the  
12 same time. Please mute your phones.

13 Go ahead. Sorry.

14 MR. LANDIS: That's all right, your Honor.

15 BY MR. LANDIS:

16 Q. I just have a few questions with respect to the folks that  
17 we just identified.

18 (Interruption over the telephone line at 11:17:57 a.m.)

19 BY MR. LANDIS:

20 Q. In connection with today's hearing, you have prepared an  
21 analysis with respect to the financial situation that  
22 Fertitta Enterprises find itself in; is that right?

23 A. That's correct.

24 Q. Have you done a similar analysis with respect to  
25 Helms Homes?

1 A. With Mr. Helms, we've have discussions. I have not  
2 finalized the analysis, but we've had discussions.

3 Q. So you've had discussions, but you don't have anything here  
4 before the Court in the form of a report; is that right?

5 A. That's correct.

6 Q. How about Terry Helms Living Trust? Have you done a  
7 similar analysis to what you did for Mr. Bullard in connection  
8 with Terry Helms Living Trust?

9 A. No, I have not. But, again, as I said, I made --

10 Q. That --

11 A. I've been --

12 Q. That's fine.

13 A. -- in discussion with him.

14 Q. You've answered my question. How about Homfeld, LLC?

15 A. No.

16 Q. How about Arthur Polacheck?

17 A. No.

18 Q. How about Dennis Flier?

19 A. No.

20 Q. How about Jim McCollum?

21 A. No.

22 Q. Why haven't you done a status update for those folks who  
23 are six-sevenths of this committee like you did for Fertitta?

24 A. We have -- I've looked at Mr. Helms' position. I know  
25 that he's in a nonperforming loan -- or in a loan that was

1 diverted.

2 I've looked at each of the individuals that are in -- on  
3 the committee with respect to what -- where their loans are at,  
4 and they would be net -- if I were to do the analysis,  
5 Mr. Landis, they would end --

6 Q. And you haven't done it yet, right?

7 A. Well, I had --

8 Q. So --

9 A. I have --

10 Q. Well, let --

11 A. I --

12 Q. Let's stop because I don't want to argue with you, but I  
13 want the record to be clear. You haven't done that analysis  
14 with respect to any entity other than Fertitta; is that right?

15 A. Where I have it today to bring to court, I -- I have looked  
16 at each --

17 Q. Okay.

18 A. -- of these loans.

19 Q. But you've answered my question.

20 (Interruption over the telephone line at 11:19:39 a.m.)

21 BY MR. LANDIS:

22 Q. You can't say that anybody else on this committee, the  
23 other six members, are not representative of the constituents  
24 they represent, can you?

25 A. I don't believe any of the other outside of Mr. Helms that

1       they had their collateral diverted.

2       Q.     So six-sevenths of the committee is consistent with the  
3       direct lenders, generally; is that right?

4       A.     Well, six-sevenths are direct lenders, and, well, I think  
5       they're all direct lenders, Mr. Landis.

6             (Interruption over the telephone line at 11:20:06 a.m.)

7       BY MR. LANDIS:

8       Q.     Right.

9       A.     So seven-sevenths are direct lenders. With respect to  
10      collateral being in a loan where it's been paid off, Mr. Helms  
11      is the one that has -- unfortunately, has a loan that's been  
12      paid off, and --

13      Q.     We'll come back to that. You have indicated I think in  
14      your testimony, previously -- and I want to be clear -- that  
15      while Fertitta Enterprises received interest overpayments  
16      thousands of others in the investor body that covers these five  
17      cases received similar payments; isn't that right?

18      A.     Yes.

19      Q.     I'm curious about something. I have to ask you. That's  
20      Exhibit No. 3. You testified in response to questions from  
21      Ms. Jarvis earlier, right?

22      A.     That's correct.

23      Q.     What's the date on that document?

24      A.     February 28th, 2006.

25      Q.     Who prepared that document?

1 A. It was prepared internally at USA Capital.

2 Q. Before or after you got started?

3 A. Before.

4 Q. Okay. And you used documents just like this one in a  
5 series to come up with information to talk about whether or not  
6 Fertitta is representative; is that right?

7 A. That's correct.

8 Q. As you sit here today, are you willing to tell Judge Rieggle  
9 under oath that the information that's contained in these  
10 documents prepared by the predecessor to you at USA Capital are  
11 true and accurate in all respects?

12 A. No. Because we've -- we've gone back and restated them.

13 (Interruption over the telephone line at 11:21:48 a.m.)

14 BY MR. LANDIS:

15 Q. So they're not accurate; isn't that right?

16 A. They -- they're not -- what we've done is gone back and  
17 reflect -- restated every -- every loan.

18 Q. Well, sure. Because when you do that, you find out there  
19 are problems with respect to the accuracy of those documents,  
20 right?

21 A. That's correct.

22 Q. Okay. Mr. Gordon touched on one of them. You gave the  
23 Court a declaration in support of removing  
24 Fertitta Enterprises, right?

25 A. Yes.

1 Q. Looking at paragraph 46, "USACM's prepetition business  
2 records and accounting systems indicate that Fertitta received  
3 approximately 2.1 million dollars in interest payments from USA  
4 that had not been collected from the borrowers," right?

5 A. That's correct.

6 Q. That's what USA Commercial Mortgage's records --

7 A. Showed.

8 Q. -- just like that indicated, right?

9 A. Yes.

10 Q. But you reconstructed them because you didn't believe in  
11 the accuracy of them; isn't that right?

12 A. That's correct.

13 Q. And you were smart not to, weren't you?

14 A. Yep. At least, I believe I was.

15 Q. Well, then, yesterday, it was 588,000 after you had done  
16 your work up to that time, right?

17 A. That's correct.

18 Q. Okay. And, today, it's a million--five?

19 A. That's correct.

20 Q. Are you --

21 A. And that's --

22 Q. Are you willing to testify under oath in response to this  
23 direct question that that is the exact amount, 1.5 million  
24 dollars, that was overpaid to Fertitta Enterprises in  
25 connection with this interest?

1 A. Yes.

2 Q. We talked about interest rates in connection with the loans  
3 that Fertitta Enterprises participated in when you were talking  
4 to Ms. Jarvis and when you were talking to Mr. Gordon, right?

5 A. That's correct.

6 Q. When were those interest rates negotiated?

7 A. It looked like at the inception of the loan.

8 Q. Okay. When were the exit fees negotiated?

9 A. At the inception of the loans.

10 Q. Were you present for any of those negotiations?

11 A. No.

12 Q. But if the borrower was there, they might have some  
13 recollection of what was discussed, right?

14 A. Yes.

15 Q. And they'd have better information of that conversation  
16 than anything that you would have based on your review of the  
17 business records; isn't that true?

18 A. Yes.

19 Q. Okay. I want to talk about the exit fees because, boy,  
20 that just seems pernicious. You talked about it as a success  
21 fee, right?

22 A. Yes.

23 Q. That means if the loan succeeds in paying off, and the  
24 borrower gives all the money back the investors receive their  
25 rate of interest. And at that point in time, they're paid in

1 full, right?

2 A. That's correct.

3 Q. Okay. And it doesn't happen until the loans pay off.

4 A. That's correct.

5 Q. And the borrowers get paid in full.

6 A. Yes.

7 Q. And then USA Commercial Mortgage after that gets its fee --

8 A. Yes.

9 Q. -- and then in this particular instance split a portion of  
10 that fee by virtue of an agreement with Fertitta Enterprises at  
11 the time of the loans; isn't that right?

12 A. At the time the loan is paid back.

13 (Interruption over the telephone line at 11:25:07 a.m.)

14 BY MR. LANDIS:

15 Q. You aren't suggesting, are you, that Fertitta Enterprises  
16 after they found out there were problems came back in and  
17 strong-armed anybody, are you?

18 A. No.

19 Q. Oh, okay. So to the extent that exit fees were earned, the  
20 underlying investors got made whole and earned the rate of  
21 return they expected, right?

22 A. That's correct.

23 (Interruption over the telephone line at 11:25:26 a.m.)

24 BY MR. LANDIS:

25 Q. We talked a little bit about who makes up the investor

1 body, and we talked a little bit, too, about who was selected  
2 to comprise this committee. Did you do some work in advance of  
3 the filing of these cases?

4 (Interruption over the telephone line at 11:25:44 a.m.)

5 THE COURT: Excuse me.

6 On the phone, please, mute your phone.

7 (Interruption over the telephone line at 11:25:46 a.m.)

8 THE COURT: Mute the phone, please.

9 MR. LANDIS: Honest, I'll quit talking faster.

10 THE COURT: It could be a crossed wire on top of  
11 everything else. It's NSA.

12 (Colloquy not on the record.)

13 MR. LANDIS: Say when, Judge.

14 THE COURT: I'm just concerned of the record.

15 Are you okay, Helen? Is that --

16 THE COURT RECORDER: Yes.

17 THE COURT: All right.

18 THE COURT RECORDER: (Indiscernible).

19 Thank you.

20 THE COURT: It's a little --

21 (Interruption over the telephone line at 11:26:15 a.m.)

22 THE COURT: It's annoying, but --

23 THE COURT RECORDER: Yes, it is.

24 THE COURT: Okay.

25 (Interruption over the telephone line at 11:26:20 a.m.)

1 THE COURT: I'm not going to say anything.

2 MR. LANDIS: Thank you.

3 UNIDENTIFIED SPEAKER: Your Honor, we could ask the  
4 operator and find out which line is talking and then have that  
5 line disconnected.

6 THE COURT: Can somebody do that?

7 (Colloquy not on the record.)

8 UNIDENTIFIED SPEAKER: Let me try it.

9 THE COURT: All right. Thank you.

10 (Interruption over the telephone line at 11:26:35 a.m.)

11 MR. LANDIS: While they're doing that, Judge, may I  
12 approach and have --

13 THE COURT: Yes.

14 MR. LANDIS: -- an exhibit marked?

15 (Trustee's Exhibit A was marked  
16 for identification.)

17 MR. GORDON: Your Honor, I guess that means we're not  
18 going to have the NSA on the list of the people we're going to  
19 inquire of.

20 THE COURT: Yeah.

21 (Colloquy not on the record.)

22 UNIDENTIFIED SPEAKER: Please mute your phone using  
23 star 6, star 6.

24 (Colloquy not on the record.)

25 MR. LANDIS: I was just looking out there to see if

1 anybody was pointing their phones at me, yet.

2 (Interruption over the telephone line at 11:27:00 a.m.)

3 MR. LANDIS: Do you want to go the --

4 THE WITNESS: Well, it is lunchtime someplace.

5 MR. LANDIS: Yeah. Do you want to go to the  
6 Weiners Circle and have some hot dogs?

7 (Colloquy not on the record.)

8 MR. LANDIS: I've been doing this almost 18 years.  
9 I've never done this.

10 THE COURT: Okay.

11 MR. LANDIS: All right.

12 UNIDENTIFIED SPEAKER: Your Honor, I just spoke to  
13 the operator, and she is going to listen in to see who it is  
14 that's talking over the proceedings and, hopefully, mute them  
15 or disconnect them.

16 THE COURT: All right. Thank you so much. All  
17 right.

18 MR. LANDIS: I'm --

19 THE COURT: Go ahead. I'm so sorry.

20 MR. LANDIS: No worries, your Honor. We're about  
21 done, anyway.

22 BY MR. LANDIS:

23 Q. Mr. Allison, when I left thinking about hot dogs, I asked  
24 you if you'd done some work in advance of the filing of these  
25 cases. Had you done some of that work?

1 A. Yes, I did, and I met with you prepetition as well.

2 Q. Right. And in connection with that conversation, did you  
3 provide me with some information regarding the top-20 investors  
4 in USA Commercial Mortgage?

5 A. Yes, I did.

6 Q. I put up what's now been marked for purposes of  
7 identification as Exhibit A, Mr. Allison. Do you recognize  
8 that document?

9 A. Yes.

10 Q. And what is it?

11 A. It's what I provided you, Mr. Landis.

12 Q. Okay. And I know what it is. You know what it is. Tell  
13 the folks that don't.

14 A. Sure. It's essentially a list of -- a list of the top  
15 creditors which has USA Diversified Trust Deed Fund with a  
16 current balance of -- a current balance of \$80,000,000,  
17 First Capital with a balance of 65,000,000, and then  
18 Fertitta Enterprises with a balance of \$12,000,000 -- and --  
19 and I could go down the list -- Terry Helms with a balance of  
20 5.7 million.

21 Q. All right. Fair enough. I don't need you to go through  
22 everybody because the list is self-explanatory, Mr. Allison,  
23 but did you prepare this document in anticipation of the filing  
24 of these cases?

25 A. I had one of my staff prepare it under my direction.

1 Q. All right. And to the best of your knowledge, is it a true  
2 and accurate representation of the information as to the  
3 20-largest investors in USA Commercial Mortgage?

4 A. Yes. And --

5 MR. LANDIS: All right. Your Honor, it's been marked  
6 for purposes of identification as Exhibit A. I'd move to admit  
7 it into evidence.

8 THE COURT: All right. I assume there's no  
9 objection.

10 It's admitted.

11 (Trustee's Exhibit A was admitted  
12 into evidence.)

13 MR. LANDIS: Thank you.

14 THE COURT: And with respect to the other exhibits --

15 MS. JARVIS: Yeah. I --

16 THE COURT: -- nobody formally moved --

17 MS. JARVIS: I would ask. I was going to ask --

18 THE COURT: Okay.

19 MS. JARVIS: -- when I got up again that  
20 (indiscernible) because I neglected --

21 THE COURT: All right.

22 MS. JARVIS: -- to ask --

23 THE COURT: Any objection?

24 MS. JARVIS: -- that they be admitted.

25 MR. LANDIS: I have objection to several of them.

1 They're hearsay, and several of them aren't relevant.

2 THE COURT: Oh --

3 MR. LANDIS: They haven't been offered --

4 THE COURT: -- all right.

5 MR. LANDIS: -- or admitted, and so --

6 THE COURT: Okay. So we'll go back through those  
7 later.

8 MR. LANDIS: Yeah.

9 BY MR. LANDIS:

10 Q. The bottom line, Mr. Allison, is tell the Judge who the  
11 single-largest nondebtor investor is in USA Commercial  
12 Mortgage.

13 A. Yeah. At the time of that report, it was  
14 Fertitta Enterprises.

15 Q. Has that changed?

16 A. In understanding some of the trusts out -- out there,  
17 actually, I think Mr. Helms may have a larger amount when I add  
18 up all of his bits and pieces.

19 Q. Okay. By the way, what -- I almost forgot. How many votes  
20 per person on the committee?

21 A. I believe Mr. Helms has two.

22 Q. Everybody else?

23 A. One.

24 Q. Thank you. So Fertitta Enterprises for all we've talked  
25 about has one vote out of seven; is that right?

1 A. Yes.

2 Q. And, in fact, Mr. Helms commands more votes?

3 A. Two.

4 (Colloquy not on the record.)

5 BY MR. LANDIS:

6 Q. We talked about true unsecured creditors. I want to visit  
7 with you a little about that, see what you know. In order for  
8 the people that you said you're concerned about not having  
9 representation, the loan that they invested in had to pay off  
10 before the bankruptcy cases were filed, right?

11 A. Yes. Or -- or have their collateral diverted.

12 Q. And that had to happen prepetition no matter what, right?

13 A. Yes.

14 Q. Because if it happened after the fact, you're the new  
15 sheriff in town, and you got the money, and you're holding it  
16 for the investors; isn't that right?

17 A. I'm holding all the money I've collected which is both --  
18 -- both -- which was some of the loans that we're -- that we --  
19 we've collected postpetition that has prepetition money in it.

20 Q. All right. How many loans are there where the borrower  
21 paid off and the borrower payments were diverted to the extent  
22 that there's no money in your Collection Account as you sit  
23 here today?

24 A. Four.

25 Q. What are those loans?

1 A. I'm going -- I'd have to go through my list of them to go  
2 -- to give you each of them. And in addition to that, there's  
3 other loans that were carried on the books that actually the  
4 collateral was released --

5 Q. Okay.

6 A. -- as we've continued to go through the investigation.

7 For example, Sheraton Hotel, the loan was foreclosed on  
8 two years ago, guarantee released. The loan still stayed on  
9 the books.

10 Q. So, in other words, you're sure that there are  
11 four loans --

12 A. And --

13 Q. -- that were --

14 A. And it's growing.

15 Q. Okay. Does Beastar, LLC, strike you as being --

16 A. It's one --

17 Q. -- one of those?

18 A. -- of them.

19 Q. How about Beau Rivage Homes?

20 A. Yes.

21 Q. Freeway 101?

22 A. Yes.

23 Q. How about Universal Hawaii?

24 A. Yes.

25 Q. Those are the four, right?

1 A. Right.

2 Q. Okay. And there might be others where there were partial  
3 diversions of borrower payments or collateral, too, and you're  
4 looking into that, right?

5 A. Yeah. There -- there are -- there were partial diversions.  
6 But as I said, the Sheraton is another transaction where --  
7 where there appeared to be a loan on the books, and there  
8 really wasn't.

9 Q. The idea of this whole exercise is that when you're done  
10 with your forensic accounting we'll be able to identify in  
11 addition to these four loans the ones where partial borrower  
12 payments were misappropriated.

13 A. Correct.

14 Q. So that's being addressed as I'm talking to you, right?

15 A. Yes.

16 Q. You know, it's interesting. In each of those four loans on  
17 your loan summary that you filed on May 31st of this year, the  
18 amount of the loan was not shown in any of them. Do you have  
19 any information as to how much those loans were actually for?

20 A. I can't -- I think that the total loan value on -- I -- I  
21 -- I'd have to go through each of the loans. I don't want to  
22 give you a guess today.

23 Q. Okay. Well, let me just ask you and see if these numbers  
24 sound about right. In Beastar, LLC, does it sound like maybe  
25 3,124,999.81? Sound about right?

1 A. It sounds about right.

2 Q. Yeah. How about Beau Rivage at \$432,349? Does that sound  
3 about right?

4 A. Yeah. And that's one we're -- we continue to look into  
5 to --

6 Q. Okay.

7 A. -- to get to the right number.

8 Q. Yeah. It --

9 A. The total amount that's -- that you would get to to go  
10 through all your -- the four loans is about \$15,000,000.

11 Q. Sure. Freeway 101, how does \$3,750,000 strike you?

12 A. Yes.

13 Q. And Universal Hawaii at \$5,166,412.53, does that sound  
14 about right?

15 A. Yes.

16 Q. Would it surprise you if I got those numbers from your  
17 loans by -- or let's try again -- investors-by-loan summary  
18 that you gave me in connection with this case at the inception  
19 of it?

20 A. No.

21 Q. Well, why wasn't it in your loan summary?

22 A. When we went through the loan summary that we're going  
23 through is to do a due-to and due-from. As I said, we're  
24 trying to investigate each of the pieces of those loans that  
25 come through. That's why as we've continued to work on them

1 they've been under the to-be-determined category.

2 MR. LANDIS: Okay. See, because now I've got to make  
3 some more exhibits, and I apologize for that.

4 May I approach, your Honor?

5 THE COURT: Um-h'm.

6 (Colloquy not on the record.)

7 (Trustee's Exhibit B was marked  
8 for identification.)

9 BY MR. LANDIS:

10 Q. Mr. Allison, I'm going to put up on the overhead here a  
11 document. I'm going to tell the Court and the parties here  
12 it's been identified for purposes of identification as  
13 Exhibit B.

14 And I will also tell you that the markings at the top are  
15 markings that I made, and they were not on the original  
16 exhibit; is that fair?

17 A. Fine.

18 Q. Do you recognize this document?

19 A. It's the Beastar loan-origination document.

20 Q. Prepared by?

21 A. Prepared by our -- prepared by our group.

22 Q. Oh, okay. When is it as of?

23 A. I don't -- I'd have to just look at the date of it to -- to  
24 do it, but I'm sure it was probably done --

25 Q. The lower --

1 A. -- as --

2 Q. -- left-hand corner.

3 A. That's not visible to me.

4 MR. LANDIS: May I approach?

5 THE COURT: Yes.

6 (Colloquy not on the record.)

7 THE COURT: Did we lose, Chuck?

8 Eileen --

9 MR. LANDIS: (Indiscernible) read (indiscernible).

10 THE COURT: -- did we lose Chuck?

11 THE WITNESS: Well, that's the way you -- and -- and  
12 we just went -- we had it --

13 THE COURT: We need to get him --

14 THE WITNESS: -- put together.

15 THE COURT: -- to put this stuff on the monitors.

16 THE WITNESS: I don't have any list.

17 THE COURT: Where did he go?

18 THE CLERK: (Indiscernible).

19 THE WITNESS: I'll --

20 MR. LANDIS: (Indiscernible).

21 THE WITNESS: I'll submit to you the date.

22 MR. LANDIS: Okay. Are you (indiscernible)?

23 THE WITNESS: Yeah. Okay.

24 BY MR. LANDIS:

25 Q. Mr. Allison, I approached you and showed you Exhibit B, and

1 we discussed it. Would you agree with me that Exhibit B is the  
2 preliminary analysis for Beastar, LLC, as of April 19th of  
3 2006?

4 A. Yes.

5 THE COURT: Wrong way, Eileen.

6 MR. LANDIS: What is it with me?

7 THE COURT: No.

8 MR. LANDIS: That's twice I've been --

9 THE CLERK: Well --

10 THE COURT: It --

11 MR. LANDIS: -- in your --

12 THE COURT: You know, it's us.

13 THE CLERK: -- (indiscernible) --

14 THE COURT: We keep meaning --

15 THE CLERK: -- (indiscernible).

16 THE COURT: We keep meaning to have remedial  
17 audiovisual.

18 THE CLERK: (Indiscernible).

19 THE COURT: And we never quite do it, so --

20 THE CLERK: Well, let me get that --

21 THE COURT: We need a --

22 THE CLERK: -- (indiscernible).

23 THE COURT: Has anybody got a ten-year-old here that  
24 could run this for us?

25 THE CLERK: No. What did I do?

1 MR. LANDIS: Your Honor, I'm afraid to start pushing  
2 buttons for fear that it won't come back on.

3 THE COURT: And I didn't touch anything.

4 MR. LANDIS: I didn't, either.

5 THE CLERK: I --

6 THE COURT: So I didn't hit --

7 THE CLERK: I did.

8 THE COURT: -- the Judge override.

9 MR. LANDIS: Oh, okay.

10 THE CLERK: I was trying to get this monitor up, and  
11 it took it right (indiscernible).

12 (Colloquy not on the record.)

13 MR. LANDIS: I --

14 THE WITNESS: My monitor's on, too.

15 MR. LANDIS: Good.

16 THE COURT: Oh, there's nothing on the screen, is  
17 there?

18 MR. LANDIS: There wasn't then.

19 THE COURT: Oh, okay.

20 MR. LANDIS: There is now.

21 (Colloquy not on the record.)

22 THE CLERK: Oh.

23 THE COURT: Oh, okay.

24 THE CLERK: Is your screen working now?

25 THE WITNESS: Yes.

1 THE CLERK: Good.

2 BY MR. LANDIS:

3 Q. Can you see better now, Mr. Allison?

4 A. Yes.

5 MR. LANDIS: All right.

6 THE COURT: Is your monitor working?

7 THE WITNESS: Yes.

8 THE COURT: Oh, good. Okay.

9 BY MR. LANDIS:

10 Q. And can you see that April 19th --

11 A. April 19th --

12 Q. -- date?

13 A. -- 2006.

14 Q. And prepared by your group?

15 A. Yes.

16 (Colloquy not on the record.)

17 BY MR. LANDIS:

18 Q. I'm going to turn to the last page of Exhibit B. What's  
19 the total funded amount? Can you read it?

20 A. 3.1 million dollars.

21 Q. It's 3,124,999.81, right?

22 A. Yes.

23 MR. LANDIS: Okay. We'd offer Exhibit B, your Honor.

24 THE COURT: All right. Any objection? No? All  
25 right.

1 That's admitted.

2 (Trustee's Exhibit B was admitted  
3 into evidence.)

4 MS. JARVIS: And I would just note, your Honor, that  
5 there is no foundation with the handwriting on there, so we're  
6 just talking about --

7 THE COURT: No. He said that --

8 MS. JARVIS: -- the document --

9 THE COURT: -- he done --

10 MS. JARVIS: -- (indiscernible).

11 THE COURT: -- that.

12 MS. JARVIS: Okay.

13 THE COURT: And he concedes that.

14 (Colloquy not on the record.)

15 THE COURT: I think we got it. We were having  
16 trouble getting the monitor on, and I think it's on now.

17 Are we all right, Eileen, on the AV?

18 THE CLERK: Uh-huh.

19 THE COURT: Eileen --

20 THE CLERK: Yeah.

21 THE COURT: -- we're okay now, right?

22 THE CLERK: We're fine.

23 THE COURT: Okay. Sorry, Chuck.

24 Thank you.

25 CHUCK: That's fine.

1 BY MR. LANDIS:

2 Q. Mr. Allison, I'm going to put what's been marked for  
3 purposes of identification as Exhibit C on the board. Do you  
4 recognize that document?

5 A. Beau Rivage. It's the Beau Rivage loan-origination  
6 document --

7 Q. Okay. And looking down in the bottom left-hand corner,  
8 can --

9 A. -- prepared April 19th by our group.

10 Q. Okay. And the last page of Exhibit C, are you able to tell  
11 the total funded amount in connection with the  
12 Beau Rivage Homes loan?

13 A. \$432,349.21.

14 MR. LANDIS: I'll move to admit Exhibit C,  
15 your Honor.

16 THE COURT: All right. That's admitted.

17 (Trustee's Exhibit C was admitted  
18 into evidence.)

19 THE COURT: Now, he's already agreed with you as to  
20 these amounts. Can we just admit them --

21 MR. LANDIS: I --

22 THE COURT: -- or --

23 MR. LANDIS: I --

24 THE COURT: You've only got two more, but --

25 MR. LANDIS: That's it. I'll go quickly --

1 THE COURT: Okay.

2 MR. LANDIS: -- your Honor.

3 THE COURT: Thank you.

4 BY MR. LANDIS:

5 Q. Exhibit D, Mr. Allison?

6 A. Freeway 101.

7 Q. As of when?

8 A. April 19th.

9 Q. Who prepared it?

10 A. Some -- our -- our group prepared it.

11 Q. And on the last page, funded amount?

12 A. 3 -- three-million-seven-fifty.

13 MR. LANDIS: I move to admit Exhibit D --

14 THE COURT: All right. It --

15 MR. LANDIS: -- your Honor.

16 THE COURT: It's admitted and hearing no objection.

17 (Trustee's Exhibit D was admitted

18 into evidence.)

19 BY MR. LANDIS:

20 Q. Exhibit E, Mr. Allison?

21 A. Universal Hawaii.

22 Q. The lower left-hand corner --

23 A. April 19th --

24 Q. -- of the first page?

25 A. -- 2006 --

1 Q. We've got this one --

2 A. -- by Mesirow.

3 Q. -- marked as Exhibit E. Do you see that?

4 A. Yes.

5 Q. The last page of Exhibit E shows what funded amount?

6 A. \$5,166,412.53.

7 Q. All right. Do you know who the largest investors --

8 MR. LANDIS: Oh, before I forget, your Honor, I'd  
9 move to admit Exhibit E.

10 THE COURT: All right. That's admitted.

11 (Trustee's Exhibit E was admitted  
12 into evidence.)

13 BY MR. LANDIS:

14 Q. Mr. Allison, do you know who the three-largest investors in  
15 Beastar are?

16 A. Not off the top of my head, Mr. Landis.

17 Q. Do you know Dwayne Deverell (phonetic)?

18 A. No.

19 Q. Do you know USA National Fund (phonetic)?

20 A. No.

21 Q. You don't know anything --

22 A. USA National Fund, yes, it's one of our -- one of our  
23 debtor entities.

24 Q. Okay. One of your debtor entities?

25 A. USA National Fund?

1 Q. Yes.

2 A. I'm sorry. I don't have it in front of me.

3 Q. Fair enough. How about Robert J. Verchota?

4 A. No. I'm sorry. I don't know him.

5 Q. If I told you that those were the three-largest investors  
6 based on your preliminary summary, would you have any reason to  
7 argue with me?

8 A. No.

9 Q. And in connection with Beau Rivage, if I said that  
10 Maria Enamorado (phonetic), Pompei Lombardi (phonetic), and  
11 Morris E. Mansell look to have the largest interest, would you  
12 disagree with me?

13 A. No. And I don't know any of them as well.

14 Q. Fair enough. In connection with Freeway 101, do you know  
15 Robert J. Kehl, K-e-h-l?

16 A. No.

17 Q. Would it surprise you that there are several investors who  
18 have about 4.44-percent interest in that loan?

19 A. No.

20 Q. And in Universal Hawaii, do you know Larry Rieger  
21 (phonetic)?

22 A. I've heard the name, but I don't know him.

23 Q. Okay. He's got about a 2.94-percent interest in that loan.  
24 Do you know Eugene Kady (phonetic)?

25 A. No.

1 Q. Would it surprise you if there are several investors at  
2 1.14 percent?

3 A. No.

4 Q. Let me ask you this. If these investors were solicited,  
5 and they were individuals that were willing to serve, and they  
6 were appointed to the Unsecured Creditors Committee, would that  
7 address your concerns as you've identified them for the Court?

8 A. Yes, Mr. Landis.

9 Q. And that doesn't mean that we have to reconvene or  
10 reallocate or appoint new folks in connection with the  
11 Executory Contracts Committee, right?

12 A. No. I'm -- I'm -- what I'm trying to find is giving --  
13 give the people a voice that have had their total collateral  
14 diverted, I mean, where --

15 Q. And --

16 A. -- where they have been -- where they're -- they're --  
17 they're truly out money, and they're a true creditor of the  
18 estate.

19 Q. And it would be right, wouldn't it, to try to select the  
20 people who have the largest financial stake from among those  
21 loans?

22 A. Yes.

23 MR. LANDIS: That's all I have, your Honor.

24 THE COURT: All right. Thank you. All right.

25 (Colloquy not on the record.)

1 THE COURT: Redirect.

2 Any other cross?

3 UNIDENTIFIED SPEAKER: No, your Honor.

4 THE COURT: Okay. Thank you.

5 Redirect.

6 MR. LANDIS: I bought it, and I didn't use it.

7 REDIRECT EXAMINATION

8 BY MS. JARVIS:

9 Q. Mr. Allison, you've been asked a lot of questions about  
10 your objection based on the fact that Fertitta is not a  
11 creditor of this estate, but that's only one of your  
12 objections, isn't it, that is the basis for your motion to  
13 remove?

14 A. That's correct.

15 (Interruption over the telephone line at 11:43:11 a.m.)

16 BY MS. JARVIS:

17 Q. And what is the other basis?

18 A. Basically, that Fertitta Enterprises is a co-lender. I  
19 mean, their -- their -- their transaction has been structured  
20 to be a co-lender with USA Commercial Mortgage in -- in these  
21 transactions as opposed to an investor. Their -- their loan  
22 structure is -- is -- is pari passu and equal to USA Commercial  
23 Mortgage as a co-lender.

24 (Interruption over the telephone line at 11:43:36 a.m.)

25 BY MS. JARVIS:

1 Q. In that way, you believe they are not like any of the other  
2 investors, direct investors, in this case.

3 A. Yes.

4 MR. GORDON: Your Honor, I'm going to object. It's  
5 leading questions. And during the opening --

6 THE COURT: Sustained.

7 MR. GORDON: -- I let it go.

8 MS. JARVIS: Okay.

9 MR. GORDON: But this is redirect.

10 BY MS. JARVIS:

11 Q. So do you believe that makes them different?

12 A. Yes. The --

13 (Interruption over the telephone line at 11:43:58 a.m.)

14 BY MS. JARVIS:

15 Q. And --

16 A. The interest rate and the -- and sharing in fees are both  
17 different than any -- all the other investors.

18 (Interruption over the telephone line at 11:44:02 a.m.)

19 THE COURT: Excuse me.

20 Whoever's on the phone, mute.

21 Thank you.

22 BY MS. JARVIS:

23 Q. You were shown by Mr. -- let me deal first with the issue  
24 of the creditor issue. You were showed by Mr. Landis the  
25 various schedules where the four loans that were paid off

1 showed various investors and how much their principal was  
2 diverted in each of those loans. Do you recall that?

3 A. Yes.

4 Q. Are there other schedules or are there other amounts which  
5 were diverted by the debtor of principal beyond just those four  
6 schedules?

7 A. Yes.

8 Q. So how would you determine -- could you determine the four  
9 -- the largest creditors with principals diverted only from  
10 those four loan payoffs?

11 A. No. There are others, and that's what we've been  
12 continuing to work on, Ms. Jarvis.

13 Q. And how would you have to go about determining that?

14 A. As we go through a loan -- on a -- on a loan-by-loan basis  
15 to understanding where each of the net positions are on -- on  
16 loans that have had, you know, partial releases or in the case  
17 of the Sheraton where it was foreclosure action, and the loan  
18 still stayed on the books.

19 Q. And I believe you have -- you stated that you have  
20 preliminarily looked at the members of the committee. You  
21 mentioned that Mr. Helms is in a loan that paid off and  
22 therefore would be a creditor of this estate. What about  
23 Mr. Ned Homfeld?

24 A. I don't believe so.

25 Q. And with respect to the direct lenders that had principal

1 paid off and diverted that are creditors of this estate, are  
2 there to your knowledge any of those investors that aren't also  
3 still investors in this estate, direct lenders?

4 A. I'm sorry. It --

5 Q. So with respect when you look at those direct lenders who  
6 have had principal paid off and diverted, so that they're  
7 creditors of this estate, are you aware of any of that group  
8 that aren't also still invested or direct lenders in other  
9 loans in this estate?

10 A. No.

11 Q. So in most cases, the lenders are involved in multiple  
12 loans?

13 A. Yes.

14 Q. Okay. You were also shown a schedule that demonstrated  
15 that Fertitta was actually paid the higher interest rates. Do  
16 you recall that it came from -- it was a February statement  
17 that came from --

18 A. Yes.

19 Q. -- the debtor's records, and you testified that you --

20 (Interruption over the telephone line at 11:46:55 a.m.)

21 MR. GORDON: Your Honor, I'm going to object to the  
22 form of the question. There is no evidence that Fertitta was  
23 paid a higher interest rate. The evidence is Fertitta was paid  
24 the interest rate, and these are the leading questions.

25 THE COURT: All right. I'll sustain on the grounds

1 of a leading question.

2 MS. JARVIS: Okay.

3 THE COURT: And, please, don't go over things we've  
4 already gone over --

5 MS. JARVIS: Okay.

6 THE COURT: -- because our time --

7 MS. JARVIS: It --

8 THE COURT: -- is getting short.

9 MS. JARVIS: Yeah. Yeah. And all I was getting to,  
10 your Honor, is that he testified that that --

11 THE COURT: Well, just ask a question.

12 MS. JARVIS: Okay.

13 BY MS. JARVIS:

14 Q. Have you independently gone back and verified whether the  
15 interest rate, the 18 percent on Hasley Canyon and the  
16 13 percent on Tapia Ranch, was actually paid to Fertitta?

17 A. Yes.

18 Q. With respect to your concern that the higher interest rate  
19 paid than other --

20 MR. GORDON: Your Honor, I'm going to object to the  
21 use of the word "concern", and she's characterizing his  
22 testimony. If she has a question, ask the question.

23 (Interruption over the telephone line at 11:47:54 a.m.)

24 THE COURT: Okay.

25 MR. GORDON: Let's not editorialize or add

1 additional --

2 THE COURT: Please just ask questions.

3 MS. JARVIS: Okay.

4 BY MS. JARVIS:

5 Q. Have you interviewed Mr. Milanowski with respect to his  
6 relationship with Fertitta and Mr. Bullard?

7 A. Yes.

8 Q. Have you interviewed other staff members at the debtor with  
9 respect to their relationship to Mr. Bullard?

10 A. Yes.

11 Q. Do those interviews form the basis for your motion today?

12 A. Yes.

13 MR. LANDIS: Objection. Hearsay.

14 MR. GORDON: Your Honor, objection. That is  
15 absolutely hearsay. You can't get it in the back door. You  
16 can't get it in the front door.

17 THE COURT: Sustained.

18 MR. GORDON: Counsel knows that. Move to strike the  
19 answer.

20 MR. LANDIS: Hearsay.

21 MS. JARVIS: Your Honor, he --

22 THE COURT: Sustained.

23 MS. JARVIS: He was asked whether there were  
24 documents on which he based that opinion. All I'm asking is if  
25 there weren't documents were there interviews upon which that

1 opinion was based.

2 MR. LANDIS: So there were interviews, your Honor.  
3 Anything that was said is hearsay. The same objection.

4 MS. JARVIS: What --

5 THE COURT: I'll sustain --

6 MS. JARVIS: I'm not --

7 THE COURT: -- the objection.

8 MS. JARVIS: I'm not asking for the hearsay, but I'm  
9 just asking to clarify the basis on which -- he was asked of  
10 the basis on which he formed --

11 MR. LANDIS: Well, let the witness --

12 MS. JARVIS: -- his opinion.

13 MR. LANDIS: -- testify, then --

14 THE COURT: Well, more importantly --

15 MR. LANDIS: -- Judge.

16 THE COURT: -- it goes beyond cross-examination, so  
17 I'll sustain the objection.

18 MS. JARVIS: Okay. Let me ask one last --

19 THE COURT: Oh, I'm sorry. That was a question on  
20 cross. I apologize.

21 MS. JARVIS: It was a question on cross.

22 THE COURT: All right.

23 MS. JARVIS: And I was just clarifying. They asked  
24 him whether it was formed based on documents. He said no. I'm  
25 asking him was it formed based on interviews.

1 MR. GORDON: Actually, your Honor, he never testified  
2 to that either in his deposition or -- and I'm sorry -- in his  
3 declaration. What I asked him about was counsel's statement in  
4 the pleading as to any basis, so he's never testified --

5 THE COURT: Okay.

6 MR. GORDON: -- to that position.

7 THE COURT: All right. So I'll sustain the  
8 objection.

9 BY MS. JARVIS:

10 Q. With respect to the difference between the 2.1 amount that  
11 was in the debtor's records that Fertitta would owe the estate  
12 and the 1.5 million which is higher than what's in your  
13 declaration, the restatement that you explained about the  
14 borrowers, is that the reason for the lowering of the amount?

15 A. Yes.

16 MS. JARVIS: That's all I have, your Honor.

17 THE COURT: Okay. This is a basic question I think I  
18 certainly thought I knew the answer to. Isn't it true that the  
19 company was run such that when money would come in from loans  
20 and then be paid out of USA Commercial to all the lenders  
21 regardless of whether or not the particular loan the lender had  
22 an interest in had made that payment?

23 THE WITNESS: That's correct, your Honor.

24 THE COURT: Okay. So to the extent that the  
25 Fertittas received any money, they received money in the same

1 process everybody else did, right?

2 THE WITNESS: That's correct, your Honor.

3 THE COURT: Okay. Now, when you say the Fertittas  
4 were overpaid, were they in any nonperforming loans?

5 THE WITNESS: They were in nonperforming loans that  
6 were -- that the company continued to pay interest on.

7 THE COURT: Okay. Are they still owed their  
8 principal?

9 THE WITNESS: Yes.

10 THE COURT: So to the extent they were, quote,  
11 "overpaid," that's interest payments they may have received  
12 before they should have received the interest payments.

13 THE WITNESS: They were interest payments that were  
14 paid by USA Commercial Mortgage when USA Commercial Mortgage  
15 did not receive the interest from the -- from the ultimate  
16 borrower.

17 THE COURT: Okay. Any questions in response to mine  
18 just limited --

19 MR. GORDON: Yes, your Honor.

20 THE COURT: -- to my questions?

21 MS. JARVIS: Your Honor, also, we need to go back and  
22 do the housekeeping of it, and we'd ask that --

23 THE COURT: Okay.

24 MS. JARVIS: -- the exhibits be admitted.

25 THE COURT: All right.

1 MS. JARVIS: And Mr. Landis wanted that addressed.

2 RECROSS-EXAMINATION

3 BY MR. GORDON:

4 Q. Mr. Allison, not all the funds that were received by  
5 USA Capital as the servicing agent were misapplied to loans, is  
6 that correct, were paid --

7 A. I'm sorry?

8 Q. If money came in on loan A, it was not automatically paid  
9 out to loan B, C, or D. Some of the money that came in on  
10 loan A was actually paid on loan A.

11 A. That's correct.

12 Q. Okay. Your task is to determine which moneys that came in  
13 on loan A or loan B was used to pay loan C or D, correct?

14 A. That's correct.

15 Q. Okay. So when the Court said isn't it true that money  
16 which came in from loans and then was paid out, it was paid  
17 out -- that is correct -- but it was not necessarily paid out  
18 to the wrong lenders.

19 A. I'm sorry. Mr. Gordon, if you're -- you're on -- to be  
20 clear, USA Commercial Mortgage kept the -- kept the company  
21 alive by paying interest to all the investors at -- every month  
22 up until April.

23 Q. Right. But not all the money that came in up until the  
24 petition date was misapplied. Part of it was.

25 A. Yeah. Because about 60 percent of the loans were not

1 paying interest at the time as of April.

2 Q. Right.

3 A. But they -- the company was paying 100 percent of --

4 Q. I agree.

5 A. -- the loans' interest.

6 Q. But that may not have been the situation in December of  
7 2005 or January 2006. Moneys were still coming in and were  
8 being applied correctly.

9 A. Moneys were coming in, and we've -- we've gone back to --  
10 and -- and I would -- as we're going through our exercise,  
11 Mr. Gordon, I would -- I would -- I wouldn't go in to testify  
12 today that moneys were being applied correctly.

13 Q. Well, would you testify that all the moneys that came in  
14 were being applied --

15 A. Paid out?

16 Q. -- incorrectly?

17 A. Well, I would be -- I would testify that the moneys that  
18 were -- that were collected were paid out, and, you know, what  
19 it was doing -- whether they were paid out in term -- within  
20 the terms of each -- of each of the notes is something that  
21 we've gone back and restated.

22 Q. Okay. And this is not only applicable to  
23 Fertitta Enterprises. This would be applicable, then, to  
24 across the board the direct lenders.

25 A. Yes.

1 Q. So singling out Fertitta is simply putting one example on  
2 the board.

3 A. You know, the reason Fertitta's singled was because that  
4 they -- they look more like a co-lender than a direct investor.

5 Q. Because they participated in the exit fee.

6 A. And -- and -- and the -- in the -- in the -- in the top --  
7 in the top-rate interest coming in as well, Mr. Gordon.

8 Q. Right. They didn't get charged a service fee.

9 A. Right.

10 Q. Okay. The 1.5 million that you claim, is that money that  
11 the Fertittas received in payments on other loans?

12 A. That's the total -- the 1.5 is the total of their portfolio  
13 that was received in excess of what was collected from the  
14 borrowers.

15 Q. As principal or interest?

16 A. Interest.

17 Q. That may have been received as principal, but it was  
18 applied to interest.

19 A. There -- in some instances, there were transactions where  
20 there -- where a collection was made, and it was styled as a  
21 principal payment. The payment was applied to principal.

22 Q. And that applied to Fertitta, and it probably applies to --

23 A. Others.

24 Q. And thousands of others, hundreds of others?

25 A. We're going through each of these transactions.

1 Q. I think you testified -- well, did you testify hundreds or  
2 thousands? I can't remember.

3 A. Probably, thousands.

4 MR. GORDON: Thank you.

5 THE COURT: Thank you.

6 Any questions in response to mine? All right.

7 Thank you. You're excused.

8 THE WITNESS: Thank you.

9 THE COURT: Just to shorten this up, I'm just going  
10 to admit the exhibits just so we don't have to argue about  
11 them.

12 I understand your objections, but we've taken a lot of  
13 time, and I as I'll indicate later I think rightfully so. Just  
14 five minutes of argument on each side.

15 MR. GORDON: Your Honor, before we go to argument, I  
16 have Mr. Bullard here because --

17 THE COURT: Oh.

18 MR. GORDON: I can put him on the stand. I'm not  
19 asking the Court to -- but I can put him on the stand to  
20 clarify a couple of points if that would be of any help to the  
21 Court if there's any questions in the Court's mind. He's  
22 pretty much answered in his declaration what I think --

23 THE COURT: I think we'll just rely --

24 MR. GORDON: -- he needs to answer.

25 THE COURT: -- on the declaration.

1 MR. GORDON: Okay. Thank you, your Honor.

2 THE COURT: All right. Go ahead.

3 MS. JARVIS: Your Honor, Section 1102(a)(2) does  
4 allow the Court to change the membership of a committee  
5 appointed by the U.S. Trustee if the Court determines that a  
6 change is necessary to ensure adequate representations to  
7 creditors.

8 And it's on this basis that the debtor is arguing that  
9 Fertitta be removed from the committee, and it is for the  
10 following reasons:

11 First, Fertitta had a higher interest rate paid to them  
12 than any other investors on the same loans. It may have  
13 special solicitations offered to them that were not offered to  
14 any other investors and the solicitations that, indeed, do not  
15 appear to exist in the business records of the company.

16 Unlike every other direct investor in the case, it was  
17 charged no servicing fees by the debtor prepetition. In that  
18 way as testified by Mr. Allison, they were treated as a  
19 co-lender, not as the rest of the investors were treated that  
20 where loans were brokered and serviced by this company.

21 Further, that loan-servicing payment was not paid even  
22 though they were contractually -- or not collected even though  
23 they were contractually obligated to do so.

24 In this way, it is different and has special treatment  
25 that is not representative of the group of investors as a

1 whole.

2 It was given being able to again participate in the exit  
3 fees again indicating that it is more like a co-lender, being  
4 treated more like a co-lender, than the direct lenders or  
5 investors that were otherwise serviced by this company.

6 This makes it an independent lender in substance and not  
7 an investor in loans through this company as was everyone  
8 else.

9 Further, between the past-due service fees that were not  
10 collected and the overpayment of interest, Fertitta owes the  
11 debtor almost 1 point -- or around 1.5 million dollars.

12 And Mr. Fertitta in the actions taken by his counsel last  
13 week has taken the decision that these overpayments cannot be  
14 collected from Fertitta by any other way than suing them.

15 And that Fertitta is entitled, in fact, to be double paid  
16 its interest when collections of the already-paid interest is  
17 finally made by the borrowers.

18 That position again is not representative and is, in fact,  
19 adverse to the hundreds of direct lenders, actually, thousands  
20 of direct lenders whose principal was diverted and who were  
21 underpaid in this estate.

22 As these are the true creditors in this group of lenders  
23 and as 1102 -- if you look 1102, it only allows for  
24 appointments of committees of creditors or equity security  
25 holders.

1           So it is creditors that ought to be on this committee by  
2     statute, and he does not fit into this category both because he  
3     is not a creditor and because he's not representative of this  
4     group.

5           The code's limitations to committees of unsecured  
6     creditors and equity holders is understandable as is the  
7     limitation that they adequately represent the entire  
8     constituency that they serve. These are the constituencies in  
9     the case that are forced to stay in the case to get paid.

10          For instance, secured creditors don't have statutory  
11     committees appointed to represent them because they do not have  
12     to stay in the case.

13          They can seek to have their collateral released from the  
14     estate, and they can take it out of the estate and seek  
15     remedies outside of the case.

16          Fertitta in that way is like a secured creditor. It's not  
17     an appropriate member of the committee because Fertitta has  
18     already taken the position that these loans are not property of  
19     the estate.

20          That they should be released from the bankruptcy and  
21     without regard to the many thousands of direct lenders that are  
22     in this case who cannot get out of this case who are owed money  
23     by this estate because of the diversions of principal  
24     prepetition.

25          And I might add that when he does -- if Fertitta seeks to

1 take these loans out of the estate that it will be very  
2 difficult as this Court has recognized for the other lenders  
3 for these amounts to be collected and then paid to the other  
4 lenders and the unsecured creditors who are entitled to this  
5 amount of money.

6 And, therefore, both because Fertitta is like a co-lender  
7 is not the same. It is not representative of the position that  
8 the other direct lenders find themselves in.

9 And because he is not a creditor of this estate and, in  
10 fact, is not an appropriate member of a committee under the  
11 statute, we would ask that Fertitta be removed from the  
12 committee.

13 THE COURT: Okay. All right.

14 (Colloquy not on the record.)

15 MR. GORDON: Your Honor, I'll keep it very short.  
16 1102(a)(4) now provides to the Court a new provision which  
17 allows it, "On request of a party in interest and after notice  
18 and a hearing, the Court may order the United States Trustee to  
19 change the membership of the committee appointed if the Court  
20 determines that change is necessary to ensure adequate  
21 representation of creditors or equity security holders."

22 What they're asking for is that Mr. Bullard be removed,  
23 Fertitta be removed, despite the fact it is the largest  
24 independent direct lender because they don't like Mr. Fertitta  
25 or Mr. Bullard.

1 Also, as candidly admitted by Mr. Allison -- and I --

2 MS. JARVIS: And, your Honor, I would --

3 MR. GORDON: -- appreciate it --

4 MS. JARVIS: I would object. There's no evidence  
5 that we don't like him, and that's why we're not asking for him  
6 to be removed, so I would ask that to be stricken.

7 THE COURT: Oh, all right. And I didn't -- I mean, I  
8 guess we could Mr. Bullard on the stand, so --

9 MR. GORDON: Your Honor, I appreciate what  
10 Mr. Allison said. What his real frustration is is that these  
11 sold-out -- let's call them sold out -- direct lenders who are  
12 pure creditors are not represented. That can be dealt with.

13 The U.S. Trustee has already said that can be dealt with  
14 by adding them to the Unsecured Creditors Committee. That  
15 doesn't mean that you remove Mr. Bullard unless he meets the  
16 standards as set forth in the case law.

17 The case law is very clear, and we have cited it, and the  
18 only response to our case law is the response in a footnote  
19 from counsel to the effect of, oh, now with 1102(a)(4) none of  
20 the case law applies because it was all prior to the amendment  
21 of 1102(a)(4) in October of 2005, six months ago. That's not  
22 true. That's not so. The case law is still the same.

23 And it is best set forth in our points and authorities in  
24 which we cite at page 6 a whole series of cases beginning with  
25 in re Hill Stores Company (phonetic) where it states the

1 bankruptcy code requires, quote, "That conflicting groups of  
2 creditors have a voice through adequate representation on a  
3 committee.

4 Adequate representation exists for a single committee so  
5 long as a diverse interest in the various creditor groups are  
6 represented on and have participated in the committee."

7 And, finally, in in re Lakleta Cab Company (phonetic), a  
8 1992 decision by the Bankruptcy Court in the Eastern District  
9 of Missouri, quote, "Courts should not remove a member from a  
10 creditors committee in the absence of specific evidence which  
11 support a finding that the member has breached or is likely to  
12 breach a fiduciary duty to or has an actual impermissible  
13 conflict of interest with the class of creditors represented by  
14 that member."

15 Your Honor, here's the basis. One, well, clearly, we  
16 believe and we suspect there's some purported relationship with  
17 Mr. Hantges and Milanowski.

18 There's no evidence of that other than Mr. Bullard's  
19 declaration in which he says I have no interest. Fertittas  
20 have no interest.

21 What we did is we negotiated a deal because we're the  
22 largest investors. And by having us do this deal, they avoided  
23 a brokerage fee, so we got an exit fee which gets us to the  
24 exit fee. Gee, that's a terrible thing because they're a  
25 co-participant.

1           The exit fee is a success fee. If everyone gets paid,  
2 then it's shared with Fertitta. That is not in conflict with  
3 the interests of the direct lenders.

4           In fact, that is directly in their best benefit because if  
5 they get paid and only if they get paid does Fertitta then get  
6 a portion of the exit fee, in this case, and I guess an  
7 unsecured claim for it.

8           Third, well, Fertitta got a different interest rate. No.  
9 It's the same interest rate. For some reason that's  
10 unexplained, that's not documented.

11           And as Mr. Bullard stated, I don't know why. They took  
12 out the service fee from all the other investors and didn't  
13 take it out from Fertitta.

14           That doesn't mean it's still not due. That doesn't  
15 mean that, ultimately, they won't recover it. That's simply  
16 it.

17           As far as the 1.5, I am completely confused because the  
18 witness testified at one point it was simply an adjustment on  
19 the loans, and then he says it's money due because it was  
20 diverted to other loans and paid over.

21           If it was diverted, that's something that's applicable to  
22 thousands. Every other direct investor, direct lender,  
23 apparently may have that problem.

24           If anything, having people on the committee who have that  
25 problem is most indicative of the interest of the direct

1 lenders.

2 As far as Mr. -- as Fertitta Enterprises participating  
3 through Ms. Chubb in a motion, I would also remind the Court as  
4 to the position taken last week by the committee of which  
5 Mr. Bullard is a chairperson.

6 Our position was very clearly that we believe that any  
7 direct-lender group which has 51 percent is entitled to  
8 terminate the service agreement.

9 But on the other hand, the committee took the position  
10 last week that that should not be done and should be deferred  
11 until July 25th for further consideration -- now August 4 -- to  
12 see what the motion says to release funds.

13 The committee from the very beginning and I have taken the  
14 position that there are certain benefits received by the direct  
15 lenders by participating in these proceedings and by having the  
16 debtor fund it, and that will come up later on this afternoon.

17 Clearly, accountings are for the benefit of the direct  
18 lenders. H Central (phonetic), the Court had an interplay with  
19 me last week about where is the best forum, and I said the  
20 committee's belief is possibly this Court is the best forum to  
21 resolve due-to/due-froms.

22 So Mr. Bullard is one of seven members of this committee.  
23 There is no showing of actual conflict.

24 THE COURT: Let me ask an obvious question.

25 MR. GORDON: Sure.

1 THE COURT: But I'd just like you to affirm it for  
2 the record. I assume since you are up here arguing on behalf  
3 of his not being removed that the committee voting as a whole  
4 and/or without Mr. -- is it Bullard or Ballard (sic) --

5 MR. GORDON: Bullard.

6 THE COURT: -- Bullard voting that the committee has  
7 directed you to take this position.

8 MR. GORDON: Yes, it has.

9 THE COURT: Okay.

10 MS. JARVIS: Your Honor, there --

11 MR. GORDON: And Mr. --

12 MR. JARVIS: There are --

13 MR. GORDON: Mr. Homfeld is here to say that -- and  
14 as Mr. Bullard testified in his declaration -- this was  
15 disclosed to the committee early on.

16 I believe that there may be a difference in terms of  
17 Mr. Helms maybe taking a slightly different position on that.  
18 I don't know. I have had -- and I'll represent to the Court.

19 But as far as I know from everything we've seen, from  
20 submitting our briefs, from talking to the members of the  
21 committee, the committee supports Mr. Bullard --

22 THE COURT: Did the committee --

23 MR. GORDON: -- remaining.

24 THE COURT: -- take a vote?

25 MR. GORDON: My understanding, the vote is positive.

1 THE COURT: Okay.

2 MS. JARVIS: Your Honor, I would just say there are  
3 two. I mean, there are two committee members in the courtroom,  
4 and I think that if the Court, you know, wants the answer to  
5 that question they could answer that themselves.

6 MR. GORDON: Yeah.

7 THE COURT: Okay. Well, I --

8 MR. GORDON: The Court can.

9 THE COURT: Again, I'm just assuming since you're  
10 making the argument, and you're representing the -- you know,  
11 the same token could be said for any attorney who argues a  
12 position.

13 I never ask the question did your client really tell you  
14 to say that or allow you to say it, but here it's a little  
15 important because --

16 MR. GORDON: Well, it --

17 THE COURT: -- we've got --

18 MR. GORDON: And not only is it --

19 THE COURT: -- got the committee.

20 MR. GORDON: Not only is it important. But when you  
21 deal with committees, it's a far different world than when  
22 you're representing debtors.

23 And in that case, we are very careful in terms of  
24 inquiring and getting a consensus because you have to in the  
25 committee process.

1 I will tell you that I've had no indication from anyone  
2 since this motion was filed last week in talking to any of the  
3 members that there was any problem with this --

4 THE COURT: Okay.

5 MR. GORDON: -- or at least the majority. Okay.  
6 And, again, I'll be very candid to the Court. I have been  
7 informed second- or third-hand that Mr. Helms may have some  
8 slight hesitations or hesitancy.

9 I will also tell the Court that -- and Mr. Bullard wanted  
10 to address the Court after the motion's over, and he can. He's  
11 very unhappy with the fact that we are spending the time and  
12 money on this.

13 And he has offered -- and I've said I don't know how you  
14 do it, but he's offered to reimburse for the expense of this.  
15 That came up in the Court comment last week. I think it is our  
16 obligation to defend it, no question about it.

17 He's a member of the committee, and it goes to the  
18 integrity of the committee, but he has stated to me and he  
19 asked to state that to the Court afterwards despite whatever  
20 the outcome is that he was prepared to reimburse.

21 The final item is that they said that Mr. Bullard looks  
22 for a double recovery. I will tell the Court that's  
23 categorically not so. It is what it is. If he owes a service  
24 fee (indiscernible), they'll pay it. They're not looking for  
25 double recovery.

1           And I think the most clear, the clearest indication, of  
2           the way in which he has divided his position as Fertitta as a  
3           direct lender and his obligations as a member and the chairman  
4           of the committee is the fact that he has taken and the  
5           committee has taken positions that are not directly in line  
6           with the other direct lenders who have filed motions in this  
7           court. We did not necessarily support their positions last  
8           week, and that was a committee decision.

9           So, your Honor, I don't believe that they've established  
10          the standards of the case law, 1104. It is clear what they  
11          wish.

12          And that is their real objective is to get representations  
13          for the sold-out direct lenders, and they should be  
14          represented. I absolutely firmly agree with that.

15                 THE COURT: Okay. Mr. Landis, do you wish to add  
16          anything?

17                 (Colloquy not on the record.)

18                 THE COURT: It's all your fault. You appointed the  
19          committee.

20                 MR. LANDIS: Every single time, Judge, there's not  
21          much that isn't. Just ask my wife. A couple of things, Judge.  
22          This is about the committee of direct lenders. Yeah. I know I  
23          gave it a longer name than that, but you and I both know what  
24          it is.

25                 It's not about just Fertitta Enterprises because the code

1 says -- and I know -- that you get to change when the change is  
2 necessary to ensure adequate representation of creditors or  
3 equity security holders. That's when you change the  
4 membership.

5 I think the evidence that's before you is that, in fact,  
6 Mr. Bullard and the committee as a whole does, in fact,  
7 represent the interests of direct lenders across the board in  
8 this case.

9 Second, how did this whole thing happen? You're right.  
10 It's my fault. I appointed them. Well, I tried to lay it out  
11 for you as best I could in our opposition papers, Judge.

12 We are required to appoint persons willing to serve that  
13 hold the seven largest claims against the debtor of the kind  
14 represented on the committee. That's in that code thing, too,  
15 down there under 1104(b)(1), so that's where I came up with  
16 this whole idea.

17 And, mind you, I'm doing this on the git-go without a  
18 whole lot of information because schedules weren't filed with  
19 the petition, and they weren't filed in 15 days. They weren't  
20 filed until long after the fact, so I'm doing the best I can,  
21 and we solicited heavily.

22 Where did we start the solicitation? Well, we had to rely  
23 on the debtors to give us the information, and they were kind  
24 enough to do that, and I will credit them for being  
25 professional in their approach.

1           They met with our office in advance of the filing of these  
2 cases to give us a heads-up and let us know what was happening.  
3 And in that meeting, they gave us that list right there. It's  
4 in the evidence before you know. Okay?

5           The members of this committee are all in that top-20 list,  
6 so I didn't just come up with them. They were the folks that  
7 were identified by the debtors.

8           Solicitations were sent, and they said that they were  
9 willing to serve. Mr. Bullard and everyone else on the  
10 committee did exactly that.

11           So from a procedural standpoint, Judge, we relied on  
12 information that the very debtors that now object to the  
13 individual being on the committee provided to us. They all  
14 indicated to the extent that they're appointed on the committee  
15 that they're willing to serve.

16           Everybody that's involved in this case as a direct lender  
17 has contract rights that run between them and other parties.  
18 That's why they're Executory Contracts Committee members, and  
19 there's issues back and forth between them.

20           And there's going to be issues with respect to whether or  
21 not they got claims as a result of what USA Commercial Mortgage  
22 did before Mr. Allison took over as the new sheriff in town and  
23 has done a credible job of trying to put Humpty Dumpty back  
24 together again.

25           Members of the Executory Contracts Committee probably have

1 claims, Judge. It's a defined term under the code,  
2 Section 101, and I believe it's (a)(5). It's right there on  
3 the board for you. You can find it. "A right to payment  
4 whether or not such right is reduced to judgment, liquidated,  
5 unliquidated," and so forth.

6 To the extent that people got overpaid, and they're being  
7 asked to pay money back, well, hopefully, the accounting will  
8 take care of it.

9 But if it doesn't, don't you think that they might think  
10 that they have a breach-of-contract claim or two against  
11 USA Commercial Mortgage for what they did? Isn't that an  
12 unliquidated claim?

13 And if they hold a claim because a claim is defined, too,  
14 somewhere in there, then I think that makes -- or that doesn't  
15 make them a creditor?

16 "An entity that has a claim against the debtor that arose  
17 at the time of or before the order for relief concerning the  
18 debtor."

19 Heck, Mr. Allison told you that to the extent that all  
20 this stuff that was bad that's resulted in injury to everybody  
21 that's sitting out here and is an interested party happened  
22 before he was appointed and happened before these cases were  
23 filed.

24 The idea, a suggestion, that these people aren't creditors  
25 is absolutely on the border of being specious. It is just

1 crazy.

2 Everybody that is an investor in connection with these  
3 cases has claims that have to be addressed, and they're being  
4 addressed.

5 Apparently, what the debtor wants to do is make it so that  
6 they can get the committees to do whatever they want, and  
7 Mr. Bullard seems to be in the way.

8 We cited you the Ruff-Co (phonetic) case, Judge. It  
9 doesn't have to be happy in Storybook Land as between the  
10 debtor and the committees in all regards.

11 "The creditors committee is not merely a conduit through  
12 whom the debtor speaks" notwithstanding their protestations  
13 from counsel bench earlier in connection with what went on in  
14 the creditor-committee meetings "and negotiates with creditors,  
15 generally.

16 On the contrary, it's purposely intended to present  
17 necessarily different interests and concerns of the creditors  
18 it represents." It must be adversarial in a sense. The  
19 debtors don't like it. Tough. That's not the law.

20 We agree that when it's appropriate this Court could say  
21 to the Office of the United States Trustee you haven't done the  
22 job. That's not the situation that's before you in this case,  
23 Judge. We have done our job.

24 Now, there is one issue that isn't pled, but it has been  
25 the theme that underpins all of this discussion. That there

1 are some people who got their loans sold out from under them  
2 that aren't represented on the committees.

3 You touched on this in a comment from the bench that I  
4 thought was real quick on the uptake which was to the extent  
5 that that happened before the cases were filed aren't they  
6 unsecured creditors. Yes, they are.

7 Is there anybody on the Unsecured Creditors Committee that  
8 stands in that situation? No, not yet. Why? Because up until  
9 May 31st we couldn't figure out who.

10 Well, we know now because we got the loan summary from  
11 Mr. Allison. We got the information as to who the debtors are  
12 in each one of those loans. I've been through it.

13 I touched in the testimony with Mr. Allison as to who I  
14 identified at least quickly as the top-three investors in each  
15 of the four loans that were at issue in this case.

16 And I will tell the Court that it is our intention to  
17 solicit and to recompromise the Unsecured Creditors Committee  
18 by adding creditors who are in that position. Now that we have  
19 the information, and we're able to do it, I will tell you we  
20 will do that.

21 That will allow those folks to have a voice on the  
22 Unsecured Creditors Committee and be properly represented in  
23 connection with the administration of these cases, but that  
24 doesn't mean the following:

25 It doesn't mean that Mr. Bullard isn't the right guy to be

1 the chair of the Executory Contracts Committee. He's got some  
2 pretty good credentials if you look at his declaration. And by  
3 the way, he was appointed the chair after he disclosed  
4 everything about all the interest that he held.

5 And, second, it sure doesn't mean that the  
6 Executory Contracts Committee as a whole is not representative  
7 of the interests of its constituents. That's just not true.

8 We're asking you to deny the motion. We're asking you to  
9 enter an order. And if you want to tell me by when we will  
10 have the solicitations completed with respect to adding the  
11 additional members to the Unsecured Creditors Committee, that's  
12 fine.

13 Thank you, your Honor.

14 THE COURT: Okay. All right. I don't need any  
15 reply. I'm going to deny the debtor's motion. Just some  
16 preliminary comments.

17 We've spent a lot of time on this today, and I know it's  
18 been expensive in the sense of the time spent that we've all  
19 been here, but I think it's a very important issue and a very  
20 important process.

21 It is very important to know that committees are fairly  
22 chosen and adequately represent their constituency, and it's  
23 important to understand the fiduciary duties that those  
24 committee members owe to the constituency that they represent.

25 Having said that, I find there's no reason to change the

1 membership. First, a comment about the notion that Enterprises  
2 was not a creditor and hence didn't belong on the committee,  
3 well, first, Mr. Landis pointed out absolutely correctly the  
4 error in that legal analysis in that where they arguably aren't  
5 owed money by USA Capital as the servicer because they may have  
6 been in the position that they received their interest payments  
7 all along the way and aren't owed any interest payments or  
8 principal payments the point is as Mr. Landis correctly pointed  
9 out everybody in this case is going to have a claim against the  
10 debtor for breach of contract or right to equitable  
11 performance, for all those things that were violations of the  
12 servicing agreement. The servicing agreements provided that  
13 payments were going to be properly made.

14 Certainly, Fertitta Enterprises is now in a position by  
15 which someone can challenge the money they've been paid because  
16 they just received moneys in the course of everything else.

17 Secondly, Fertitta did nothing during the course of  
18 receiving those moneys -- and I'll go back to the inceptions of  
19 the loan in a minute -- that everybody else got.

20 The problem in this case -- yes, it was a problem -- was  
21 that everybody sat there fat, dumb, and happy collecting their  
22 checks every month.

23 In essence, as I have said before, it emanates the classic  
24 Ponzi scheme. As long as the money keeps coming in, nobody  
25 questions, nobody challenges, and the money just comes from

1 either new investors or it comes from loans that weren't  
2 supposed to be paid.

3 So they like everybody else received their money all  
4 along. This is not a situation in which they received money,  
5 and nobody else did.

6 Now, vis-a-vis the interest and the exit fees, as to both  
7 those fees, I see nothing that would preclude them from still  
8 adequately representing the committee.

9 The fact they may have been treated differently along the  
10 way in the initial loan transactions or servicing transactions  
11 is to me of no moment.

12 For example, if we had a casino bankruptcy, and the top-20  
13 creditors included Michelin (phonetic), (indiscernible), and it  
14 included some gaming company that forgot to get their  
15 collateral secured, and it included some wine store, each of  
16 those entities may well have been paid in accordance with  
17 different terms and conditions.

18 Some of them may have paid on the 90 days. Some may have  
19 been paid on a 30-day. Some may have been paid with no  
20 (indiscernible).

21 But the point is they can all adequately represent the  
22 committee because they are creditors, and they owe their duty  
23 to the constituency as a whole.

24 The exit fees, now, if Fertitta received exit fees to the  
25 exclusion of USA Commercial, I would see a distinction, but

1 that's not the case. They share in the exit fees.

2 And, indeed, as Mr. Gordon pointed out, their motivation  
3 will be to see that the loans gets paid because at least they  
4 have a claim or some right, arguably, to receive a portion of  
5 those fees.

6 And, again, you don't get those fees until the loans are  
7 paid in full, so that's not something that says that they're  
8 biased. That works the other way.

9 I do question -- I think there may be some evidence that  
10 the debtor's motivations were not so much adequate  
11 representation, but a concern about the way -- they didn't like  
12 what was happening from the committee because there was no  
13 analysis done on the other noteholders.

14 And while it's true there's no exit financing, there's no  
15 interest, but as to the loans. It doesn't make any difference  
16 what the motivations are.

17 You know, I'm sure that the debtor in their belief was  
18 concerned, and I'm not impugning any bad motives. I'm just  
19 saying there was a lot of emphasis put on Fertitta and not the  
20 other entities on the committee which makes me wonder.

21 I think I've touched all the points. Again, I  
22 emphasize -- and I know Mr. Bullard knows. I know Mr. Gordon  
23 knows. I know the committee members know, but the committee  
24 members owe a fiduciary duty to their constituency.

25 And in some cases, it may well be Mr. Fertitta finds --

1 excuse me -- Mr. Bullard finds himself, well, arguing with  
2 himself.

3 On one hand, something may be better for his client. But  
4 as committee chair and committee member, something else may be  
5 better, and it's a tough position to be in, but I think it's  
6 important that he's accepted.

7 The U.S. Trustee's Office did exactly what they were  
8 supposed to do in the manner they were supposed to do it, and I  
9 was kidding Mr. Landis by saying it was his fault.

10 My only point being it's the U.S. Trustee's Office that  
11 appoints committees. The Court does not appoint. The debtors  
12 do not appoint. The committee appoints, but it's appointed  
13 through a process.

14 Appointed through the process is normally the  
15 seven-largest creditors unless they're insiders or some other  
16 problem.

17 There's no evidence to suggest that these enterprises are,  
18 indeed, insiders, any untoward influence, or connections. The  
19 fact that somebody may know somebody, you know, notwithstanding  
20 what the L.A. Times think, everybody does know everybody in  
21 Las Vegas, so, you know, I don't see that as a concern.

22 So with that, I'll deny the motion. We'll take a short  
23 break. This is how I see things proceeding from here. I'd  
24 like to take next after this Mr. Benincasa's motion just  
25 briefly, and then from there we'll go to as you suggested -- I

1 think you suggested DIP next --

2 MS. JARVIS: Yes.

3 THE COURT: -- DIP financing next?

4 MS. JARVIS: Yes, your Honor.

5 THE COURT: And then we'll take a break from about  
6 1:30 to 2:30. I have a 2:00 o'clock scheduling conference.  
7 Well, if we're done by 1:30, but I can't imagine that.

8 But I need to take a break at 2:00 for a scheduling  
9 conference that's going to talk a half hour. My staff  
10 certainly needs some time for lunch, so we'll take our break  
11 from 1:30 to 2:30.

12 We'll take now, though, about a 15-, 20-minute break, so  
13 that everybody can (indiscernible) or my staff can grab  
14 something, and then we'll start back up.

15 (Colloquy not on the record.)

16 THE CLERK: All rise.

17 (Recess at 12:25:56 p.m.)

18 (Court reconvened at 12:58:43 p.m.)

19 THE CLERK: Bankruptcy court is now in session.

20 (Colloquy not on the record.)

21 THE COURT: Be seated.

22 (Colloquy not on the record.)

23 THE COURT: Just one final point on the committee  
24 situation. Yes. I think it does make sense to add those  
25 people who have no collateral left to a committee.

1           And when we were speculating about this the last time, the  
2           question was, well, on one hand, they've got contracts. But on  
3           the other hand, they're unsecured.

4           The U.S. Trustee's Office is in the best position I think  
5           to at least just -- you know, it's your decision to decide how  
6           those committees work.

7           And I would appreciate if you could -- they do need  
8           representation. If you could add them to a committee such that  
9           they'd be represented and on-board before the next hearing, I'd  
10          appreciate that.

11          MR. LANDIS: If the next hearing isn't until July --

12          THE COURT: That's right.

13          MR. LANDIS: -- that should be plenty of time,  
14          your Honor.

15          THE COURT: Okay. Great. All right.

16          So on the Benincasa matter.

17          THE CLERK: Page 3.

18          THE COURT: Will you state your name, please.

19          MR. BENINCASA: Jasper Benincasa.

20          THE COURT: Okay. I'm not sure if you understood  
21          what was happening in this matter. The problem is with your  
22          loan or with your request for funds there were a number of  
23          people as I understand from what Mr. Schwartzer said at the  
24          prior hearing and the basis which I ruled had put money in the  
25          account to buy loans, and there were certain money. People put

1 money in an account to get their money out because the loans  
2 had been bought.

3 Unfortunately, there were more claimants to the fund than  
4 there are funds. Mr. Schwartz's indicated the debtor is not  
5 claiming any interest in any of those moneys.

6 But the point is all those people will have to fight among  
7 yourselves. You'll have to fight among yourselves as to who  
8 has the right to the money, so the way it was left was he was  
9 going to file what's called an interpleader action to determine  
10 that.

11 Was that done or has that been done yet, Mr. Schwartz?  
12 Have we filed the interpleader? Have you filed the  
13 interpleader action, yet?

14 MR. SCHWARTZER: No, your Honor. On analysis, what  
15 we -- and I think we mentioned it on June 21st. We mentioned  
16 that it would be inappropriate for my firm to represent  
17 USA Commercial Mortgage Corporation (sic) bringing an  
18 interpleader action because one of the defendants would be  
19 USA Capital First Trust Deed Fund.

20 So there will be an ex parte application to employ  
21 Mr. Huston as special counsel for USA Commercial Mortgage  
22 Corporation (sic) to file that interpleader action.

23 And we're also going to request authority for the equity  
24 security holders of USA First Trust Deed Fund's counsel to  
25 represent USA First Trust Deed Fund as a defendant in that

1 interpleader action, so my firm won't be on either side of  
2 that.

3 THE COURT: Okay.

4 MR. SCHWARTZER: The complaint has been prepared.  
5 It's been drafted. It's been sent to Mr. Huston. The  
6 application has actually been prepared.

7 THE COURT: Can we get that done by Friday, please.  
8 I mean, I'd like to get this started because these people are  
9 waiting for it. You know, the longer we go --

10 MR. SCHWARTZER: I understand. What we're doing is I  
11 guess Mr. -- one of Mr. Allison's E-mails that he probably  
12 hasn't looked at today has the application for his signature --

13 THE COURT: Okay.

14 MR. SCHWARTZER: -- to employ Mr. Huston as special  
15 counsel. Mr. Huston is not in a position to file the complaint  
16 until the order appointing him is issued.

17 THE COURT: Okay.

18 MR. SCHWARTZER: And so, hopefully, we'll get that  
19 uploaded --

20 THE COURT: Okay.

21 MR. SCHWARTZER: -- to you today, your Honor.

22 MS. CARLYON: Is there any appetite --

23 MR. SCHWARTZER: What --

24 MS. CARLYON: -- to just employ him on an interim  
25 basis, and we can deal --

1 MR. SCHWARTZER: If the Court will do --

2 MS. CARLYON: -- with the application --

3 MR. SCHWARTZER: -- a speaking order --

4 MS. CARLYON: -- in August?

5 MR. SCHWARTZER: -- to do that --

6 THE COURT: Does the U.S. Trustee -- do you all have  
7 an objection with that?

8 MR. LANDIS: I haven't even seen the application,  
9 your Honor. I have no earthly clue.

10 THE COURT: Okay. Well, what I can do is if the  
11 U.S. Trustee's Office signs off on that I can certainly  
12 authorize that order to be signed next week if it's necessary.

13 MR. SCHWARTZER: Okay. Your Honor, with regard to  
14 that order appointing Mr. Huston, could the Court direct me  
15 that the only signature I need is from the Office of the  
16 U.S. Trustee, rather than --

17 THE COURT: Yes.

18 MR. SCHWARTZER: -- all four committees?

19 THE COURT: That's acceptable to everyone, isn't it?

20 MR. LANDIS: It is.

21 MS. CARLYON: Yes, your Honor.

22 THE COURT: Okay.

23 MR. LANDIS: It is by our standards, your Honor.  
24 We'll turn it around quickly with the debtor.

25 THE COURT: Okay.

1 MR. SCHWARTZER: Okay.

2 THE COURT: So does that answer -- does that explain  
3 what's happening in your case?

4 MR. BENINCASA: Yes. It does. One of the loans,  
5 Del Valle, has been since repaid postpetition. I don't see  
6 where there would be a conflict --

7 MR. SCHWARTZER: Okay.

8 MR. BENINCASA: -- on that loan.

9 MR. SCHWARTZER: With regard to that, that's going to  
10 be included in the motion that's going to be heard on  
11 August 4th that we're required to file by July 7th because  
12 Mr. Benincasa is in the situation that's similar to hundreds of  
13 other investors in this company.

14 THE COURT: Okay. So that motion will be dealt with  
15 at that time on that issue.

16 MR. BENINCASA: Okay.

17 THE COURT: All right. Thank you.

18 MR. BENINCASA: Thank you, your Honor.

19 THE COURT: Um-h'm. So I'm going to deny the motion  
20 for reconsideration without prejudice to the interpleader  
21 action.

22 MR. SCHWARTZER: Thank you.

23 THE COURT: All right. Now, on I guess the loan.

24 MS. JARVIS: If I may, your Honor, I think we'd like  
25 to address No. 2, the motion for order on the cash-management

1 procedure --

2 THE COURT: All right.

3 MS. JARVIS: -- because I think we've resolved that.  
4 And, in fact, this is part of the reason why we're -- you know,  
5 we resolved it in favor of going forward on the DIP financing.

6 THE COURT: Oh, all right.

7 MS. JARVIS: It simply makes --

8 THE COURT: Uh-huh.

9 MS. JARVIS: -- the DIP financing more necessary.

10 THE COURT: Okay. On page 2, then.

11 MS. JARVIS: Yeah. The objections that were filed on  
12 that dealt with -- because, originally, we had put the -- the  
13 money that is collected that has already been paid out in  
14 interest, the money collected from the borrowers that  
15 Commercial Mortgage has already paid to investors on that loan  
16 as interest, it is, you know, our contention that under, you  
17 know, the doctrine of equitable subrogation that that becomes,  
18 you know, the estate's money when that is paid, however.

19 And we had originally put it in the budget to be put in  
20 the operating account. We also had taken the interest which  
21 has been accruing on the funds in the Collection Account and  
22 put it into the budget.

23 However, there were objections lodged to both of those  
24 issues. And rather than resolve them at this point in time  
25 which we would like to hopefully resolve in a negotiated way

1 with the four committees through probably a plan of  
2 reorganization, we have set those aside.

3 So if you'd look at the budget that was filed attached to  
4 Mr. Allison's declaration yesterday --

5 (Colloquy not on the record.)

6 THE COURT: Yesterday. Okay.

7 MS. JARVIS: If you see on the next to bottom line,  
8 it said estate funds in Collections Account, and --

9 THE COURT: This is not the June 5th one, right? Oh,  
10 that would be June.

11 MS. JARVIS: Yeah. This is the one that was filed  
12 yesterday --

13 THE COURT: So it would be --

14 MS. JARVIS: -- morning.

15 THE COURT: -- June 20th.

16 MS. JARVIS: Yes.

17 THE COURT: It's too small to read.

18 MS. JARVIS: I have that same problem.

19 THE COURT: Do you have an extra copy?

20 MS. CARLYON: I do, your Honor.

21 THE COURT: All right. Thank you.

22 (Colloquy not on the record.)

23 THE COURT: Well, it's first and third.

24 (Colloquy not on the record.)

25 THE COURT: Thank you.

1 MS. JARVIS: And to resolve the objections that were  
2 filed to the cash-management motion, we have taken all those  
3 funds --

4 THE COURT: And I found that in the meantime. It was  
5 attached to --

6 MS. JARVIS: Okay.

7 THE COURT: -- the fifth supplemental, right?

8 MS. JARVIS: And --

9 THE COURT: Okay.

10 MS. JARVIS: And we've put them in the -- it's in the  
11 second to last line -- estate funds in Collections Account.  
12 That would include both the interest component and the amounts  
13 that the estate has collected from borrowers on interest that  
14 they've already paid to the lenders in that loan.

15 That currently stands at approximately \$10,000,000. That  
16 will remain in that account. We're not seeking to use that at  
17 this point in time. As I've said, that will be a subject of  
18 further negotiations with the four committees.

19 THE COURT: Okay.

20 MS. JARVIS: So I believe with that modification we  
21 would ask that the cash management be approved, and I think  
22 with that modification there aren't --

23 THE COURT: Okay.

24 MS. JARVIS: -- any objections to it.

25 THE COURT: And I take it there are no --

1 Ms. Karasik, comments, objection?

2 MS. KARASIK: Eve Karasik, Stutman, Treister & Glatt,  
3 on behalf of the First Trust Deed Committee. Your Honor, just,  
4 first of all, this was the third budget filed in support of  
5 this motion filed on the eve last night. We did get an interim  
6 last week that was different.

7 And I just ask that we can try to stop running this case  
8 like this. It just gets very, very difficult to really  
9 represent your clients when things are filed on the eve, Friday  
10 nights, and nights before the hearing, and I just ask that the  
11 debtors try to organize their practice a little bit better to  
12 the extent that they can.

13 THE COURT: Okay.

14 MS. KARASIK: On the subrogation issue, we clearly  
15 disagree with that. We reserve all rights that characterize  
16 the funds as estate funds in the Collection Account. We  
17 disagree with that characterization.

18 They can leave it in there if the Court approves the  
19 cash-management motion, but we reserve all rights with respect  
20 to that characterization.

21 We just note that I believe this motion requests use of  
22 funds only through the 25th of July. There are expenses beyond  
23 the 25th of July in this budget.

24 And we request, you know, that it be clear that that is  
25 the time period through which this motion follows because there

1 are additional expenses after that period in the budget that we  
2 need to understand better.

3 THE COURT: All right.

4 MS. KARASIK: Lastly, your Honor, the budget has  
5 professional fees for the debtors and for other folks in there.  
6 We have not made it through our first bill.

7 We have to figure out what our budget should be for our  
8 firm and for our financial adviser, and we need to reserve the  
9 right in the next budget --

10 THE COURT: Well, I'm unclear.

11 MS. KARASIK: -- to have that --

12 THE COURT: And someone addressed this before.  
13 Professional fees, see schedule. All these fees are apparently  
14 coming out --

15 MS. KARASIK: I think they have --

16 THE COURT: -- of USA Commercial, but the point is  
17 the fees, for example, for you wouldn't come out of  
18 USA Commercial.

19 MS. KARASIK: No. I think ours are broken down by  
20 the First Trust Deed. There's a separate spreadsheet.

21 THE COURT: The --

22 MS. KARASIK: The debtors do need to allocate, and  
23 they have not yet allocated.

24 THE COURT: Okay.

25 MS. KARASIK: And that's something we're going to

1 talk with them about in the next month before the interim-fee  
2 procedure.

3 THE COURT: I mean, what happens is it wouldn't --  
4 you know, the professional fees from USA Commercial would only  
5 be those for the Secured Creditors Committee -- excuse me --  
6 Mr. Gordon's committee, the unsecured committee, the debtor.

7 And then moneys would flow to your clients and your -- the  
8 budget then would go for there, but it wouldn't come out of  
9 USA Commercial, and you agree with that.

10 MS. KARASIK: Correct, your Honor.

11 THE COURT: Okay.

12 MS. KARASIK: And then I guess just a reservation of  
13 rights on the amount of the fees they've budgeted for the  
14 debtor's professional fees.

15 THE COURT: Sure.

16 MS. KARASIK: And thank you, your Honor.

17 MS. JARVIS: Okay. Let me just further respond,  
18 your Honor. We agree. When we labeled these for purposes of  
19 the budget as estate funds, we are not asking the Court to make  
20 any determination on that.

21 Like I said, we're just holding that. We'll either  
22 negotiate that out or seek a further determination by this  
23 Court at a later time, so that is without prejudice to  
24 everyone's rights, and that is actually true of this budget as  
25 a whole.

1 And as you recall, we had filed a motion for procedures  
2 dealing with professionals, and we continued that until the  
3 25th.

4 And the reason why we had filed it is because of exactly  
5 what Ms. Karasik is saying which is we don't have adequate  
6 figures for the committees as to their professional fees and  
7 what they are.

8 So this is not meant to be determinative of how much they  
9 will, you know, eventually be requesting from this estate.  
10 It's just simply doing the best we have with the information  
11 that we have.

12 And as we will get into in Mr. Allison's testimony in the  
13 next motion, the fees at the bottom of this -- and let me just  
14 show you again.

15 You can see there's a line that says incurred and unpaid  
16 professional fees. That is merely for tracking. It's not for  
17 payment. That's why it's not up in the budget above which is a  
18 cash forecast.

19 It is simply for tracking purposes again based on an  
20 estimation just so we have some way of keeping track of things  
21 that we believe are accruing, you know, and will eventually  
22 become payable because it's important to manage and understand  
23 that.

24 That is, you know, again, not determinative of anything,  
25 and the Court has not allowed that. It's simply for

1 informational purposes only.

2 We are only asking for this to be approved through the  
3 25th when we would ask if we -- if the Court grants our interim  
4 DIP financing, that's when it would end as well.

5 So the fact that it goes out, it's just a typical  
6 13-week cash, you know, cash flow, but it's not meant to ask  
7 for approval beyond that.

8 THE COURT: Okay. Is there any objection by the  
9 committees if we make this through the 4th because the 4th is  
10 when we're having the motion for direct pay?

11 Things will change based upon that because then we have  
12 checks going out, so it will be extra budgets, and/or we won't  
13 have checks going out.

14 So is there any problem if we make that budget through the  
15 4th? We'll discuss it on the 25th, but the budget should go  
16 through the 4th.

17 MS. JARVIS: Let me just explain. That would be  
18 easier. And, in fact, we haven't both -- if you'll look down  
19 both at -- the professional fees to be paid don't come in until  
20 after the 4th.

21 And the distributions from the Collection Account also  
22 don't come in until after the 4th, so neither of those issues  
23 which would be new issues are going to be addressed until after  
24 the 4th.

25 (Interruption over the telephone line at 01:13:09 p.m.)

1 THE COURT: Okay.

2 MS. CARLYON: Your Honor, there are some issues if  
3 you extend it past the 25th. For example, the \$400,000 in  
4 loan-servicing expenses, it's on that list of things we need to  
5 more fully understand.

6 THE COURT: Okay.

7 MS. CARLYON: With regard to the operational  
8 expenses, I don't think there's any objection, but we need to  
9 have the same understanding that other expenses aren't being  
10 approved by approving the budget.

11 That being said, we don't have a problem with the uses of  
12 funds through the 4th, but we're not consenting to, for  
13 example, the payment of the \$350,000 in lender fees or the  
14 \$400,000 in loan-servicing expenses via this motion.

15 THE COURT: Okay.

16 MS. JARVIS: And --

17 (Interruption over the telephone line at 01:13:51 p.m.)

18 MS. JARVIS: And this was prepared for the DIP  
19 financing, and we intend to go through that. That would only  
20 apply if, you know, the DIP financing is approved in the form  
21 that we presented it.

22 THE COURT: Okay. All right. Well, let's just make  
23 it through the 6th, then, just for purposes of cutoff  
24 understanding full well that to the extent that any fees  
25 require Court approval that this, of course, cash-management

1 budget doesn't approve those. This is just budgeting for them.

2 MS. JARVIS: And, your Honor, I would also, you know,  
3 respond we -- the debtor has -- we have four committees to deal  
4 with.

5 We get four separate, you know, requests every day, and we  
6 are doing our best to provide everyone with, you know, as much  
7 information as possible.

8 It's just a very difficult situation for us, and we  
9 certainly -- or we've instituted weekly telephonic meetings  
10 with them. We also have meetings during the week with counsel  
11 and with committees. We are doing our best to provide the  
12 information as quickly and rapidly as we can.

13 It's just, you know -- and where we're dealing with the  
14 records on top of it, you know, that we've had reconstruct.  
15 It's simply difficult for us to deal with this.

16 I mean, your Honor made a comment about, you know, we want  
17 friends in the committee. We don't have any friends in the  
18 sense that -- we understand all the committees have their own  
19 issues, and they have different issues, and we're dealing with  
20 all four of those at the same time.

21 We expect that they each have their own issues that are  
22 different and adverse to us, and we are doing our best to  
23 address those timely.

24 THE COURT: All right. So just for purposes of  
25 clarification, we'll continue this motion to use cash

1 collateral which was No. 3. The first one is resolved because  
2 we've taken it through today. I'm just trying to clarify the  
3 calendar.

4 So No. 407 is continued, and then I assume you'll be  
5 filing a separate motion --

6 MS. JARVIS: To continue it.

7 THE COURT: -- to continue it?

8 MS. JARVIS: Yes.

9 THE COURT: Okay.

10 MS. JARVIS: With a new budget.

11 THE COURT: All right. All right. So that's  
12 approved.

13 THE CLERK: So that's August 4th, Judge?

14 THE COURT: Yes. No. We'll do that July 25th.

15 THE CLERK: Oh, July 25th.

16 THE COURT: Oh.

17 MS. JARVIS: To address the July 25th, but the --

18 THE COURT: The budget is continued --

19 MS. JARVIS: The budget --

20 THE COURT: -- to August 4th.

21 MS. JARVIS: -- continues until August 4th.

22 THE COURT: Correct.

23 MS. JARVIS: Okay.

24 THE COURT: Okay. Next, you said you want to do the  
25 lending motion.

1 MS. JARVIS: Yes. The DIP financing, and I think to  
2 start out we're going to go straight into again testimony from  
3 Mr. Allison to answer these questions if the Court will allow  
4 us to do that.

5 THE COURT: Ooh, I guess we can -- we only have  
6 15 minutes before I have to take a recess.

7 MS. JARVIS: Yeah. But let me first go through -- in  
8 fact, this might be helpful. Maybe we can deal with that  
9 afterwards, but let me go through and just explain.

10 We have been in intense negotiations with all four  
11 committees. And as a result -- and with the DIP lender. And  
12 as a result of that, there are some changes that I would just  
13 like to address before we --

14 THE COURT: All right.

15 MS. JARVIS: -- take a break.

16 THE COURT: Let's do that, yes.

17 MS. JARVIS: Okay. We have agreed and the DIP lender  
18 has agreed that this will be -- what we're requesting today is  
19 interim financing between now and July 25th.

20 And that will be limited by \$3,000,000 only to be used as  
21 necessary and, you know, appropriate to prevent irreparable  
22 injury, so the amount we're asking for today will be limited to  
23 that \$3,000,000. We also have negotiated with the lenders --

24 THE COURT: And the fees will be based upon that  
25 3,000,000 and not the 15,000,000.

1 MS. JARVIS: Well, there will be no exit fee that is  
2 going to be charged, for instance, if the Court does not grant  
3 the permanent financing on the 25th.

4 However, the fees as far as the origination fee which is I  
5 think \$150,000 and the other fees involved in there would  
6 still, you know, remain in effect --

7 THE COURT: But not the fee --

8 MS. JARVIS: -- during that period.

9 THE COURT: -- based upon the maximum authorized. In  
10 other words, there's a fee in there that is also -- there's a  
11 fee on the basis of how much you actually took. There's a fee  
12 based upon which you have the right to take. That's based upon  
13 the 3 as opposed to the 15.

14 Of course, for one-month's difference or two-months'  
15 difference, it probably doesn't make much difference, but --

16 MS. JARVIS: Yeah. Let me have further  
17 discussions --

18 THE COURT: Okay.

19 MS. JARVIS: -- to clarify that --

20 THE COURT: Um-h'm.

21 MS. JARVIS: -- over the lunch period, but I think  
22 that is in there, actually, that that fee would still be in  
23 there.

24 There are also the fees -- no fees are paid until the deal  
25 actually closes until -- and this is just a clarification. So

1 until the funding actually closes, no fees of any kind would be  
2 paid.

3 The debtor will give the Fund committees who are, you  
4 know, of course, a part of -- I mean, it's the Funds' loans  
5 that are part of the collateral that's being pledged for the  
6 DIP financing.

7 And because of that, then the debtor will agree to give  
8 the Fund committees the right or I guess the debtor will not  
9 enter into loan documents until the Fund committees have agreed  
10 to the form of the loan documents. So as between the debtors  
11 and the Fund committees, that agreement will be in there.

12 Further, the debtors will not draw down on the DIP lending  
13 loan unless, again, the debtors get written approval from the  
14 Fund committees for that drawdown.

15 During this interim period, there also would be no first  
16 right of refusal on the second tranche or the second piece of  
17 the funding which is with respect to the individual loans that  
18 have unfunded, you know, requirements. That there would be no  
19 first right of refusal during that interim period with respect  
20 to those.

21 Although, we do intend to go forward and continue to  
22 negotiate in hopes that if we can get the DIP financing  
23 approved today, then we can go forward and try to tee those up  
24 for approval on the 25th because there are several projects as  
25 we will demonstrate that are in pretty dire straits with

1 respect to preserving the collateral of lenders and of the Fund  
2 debtors, so that would not apply.

3 But we would not -- they would only look at those loans if  
4 we, if the debtors, request them to do that, and the debtors  
5 would only request them to do that if they had agreement with  
6 the two Fund committees.

7 THE COURT: Well, but what if a loan is held by  
8 direct investors, for example, the Canepa --

9 MS. JARVIS: Um-h'm.

10 THE COURT: -- Canepa loan?

11 MS. JARVIS: Canepa. Then yeah. And in that  
12 instance, what would happen is we can go forward if the  
13 committees can --

14 THE COURT: Can or cannot?

15 MS. JARVIS: -- can --

16 THE COURT: Um-h'm.

17 MS. JARVIS: -- go forward if the committees, the two  
18 committees, agree to request a funding proposal to be made by  
19 the lender in the interim and to notice that up.

20 THE COURT: Well, why would the -- assuming neither  
21 of the Funds were investors in any particular loan, why should  
22 they have a say?

23 MS. JARVIS: Because this would require some  
24 due-diligence fees that would then be part of the DIP lending,  
25 and the Funds have collateral. They have 19 loans between them

1 that would be pledged as collateral for the DIP financing.

2 THE COURT: Okay.

3 MS. JARVIS: And in the interim, you know, between  
4 the initial financing and the permanent financing, this issue  
5 of allocation with respect to individual loans -- and those  
6 individual loans by the way would be secured, not  
7 cross-collateralized. But when granted, they would be secured  
8 solely by the project on which they are funding.

9 THE COURT: But they would prime --

10 MS. JARVIS: They --

11 THE COURT: -- the present loan.

12 MS. JARVIS: That would be the proposal. It would be  
13 noticed up separately and basically noticed up, so the direct,  
14 you know, lenders or Fund lenders that are in that would have  
15 the opportunity, you know, to decide that, you know, in  
16 accordance with their contractual rights whether or not they  
17 want this to go forward.

18 THE COURT: Okay. So this is sort of the cart before  
19 the horse, and it all meshes together. None of these funds are  
20 sought to be borrowed on the interim basis for anything but  
21 advancements on current loans; is that correct?

22 MS. JARVIS: No. Well, the 3,000,000 that we're  
23 talking about now is for, you know, operational enforcement,  
24 you know, purposes to, you know, just move generally --

25 THE COURT: So it would go to USA --

1 MS. JARVIS: -- the estate.

2 THE COURT: -- directly.

3 MS. JARVIS: Yes. Yes. And the way the second piece  
4 ties in which is the piece where you're doing the loans on  
5 individual projects that have unfunded requirements is that the  
6 DIP lender will not give us, basically, a good deal or, you  
7 know, the commitments on the second piece unless we have the  
8 first piece in place, so they're tied together.

9 And it's been negotiated, so that there can be a lower  
10 interest rate overall. And, in fact, that interest rate enures  
11 to the benefit of the entire debtors because if we can get a  
12 loan at a lower interest rate to fund this unfunded  
13 requirement, you know, at a higher interest rate, then, of  
14 course, the difference between it would be property of the  
15 estate, and it would benefit everyone in the estate.

16 THE COURT: So I guess what you're saying -- so under  
17 this -- since we're not having professional fees disbursed, I  
18 guess I don't understand in this cash budget why we need to  
19 borrow money during this month for operations and enforcement  
20 according to this cash-management budget we just approved.

21 MS. JARVIS: Yeah. I will go through that with  
22 Mr. Allison, if you would --

23 THE COURT: Okay.

24 MS. JARVIS: -- you know, bear with me and because  
25 this is -- and explain this budget as to what has done. Those

1 professional fees are put on there just so that it's clear kind  
2 of what's accruing --

3 THE COURT: Sure. They're going to ultimately  
4 accrue.

5 MS. JARVIS: -- because --

6 THE COURT: But --

7 MS. JARVIS: -- otherwise you're financing --

8 THE COURT: I agree.

9 MS. JARVIS: -- on the backs of professionals, and it  
10 doesn't make any sense to put yourself in an  
11 administratively-insolvent --

12 THE COURT: No.

13 MS. JARVIS: -- situation.

14 THE COURT: I agree, but I guess what I'm saying is  
15 you're showing -- isn't there a showing that there are funds  
16 available for operations without a loan? Isn't that what this  
17 budget shows?

18 MS. JARVIS: And if you can hold that thought --

19 THE COURT: Okay.

20 MS. JARVIS: -- 'til we get through describing this,  
21 I will have Mr. Allison explain kind of how the budgeting --

22 THE COURT: Okay.

23 MS. JARVIS: -- and the deeds --

24 THE COURT: All right. And since we're going to be  
25 having to take a break, let me tell you a real concern, and,

1 perhaps --

2 MS. JARVIS: Okay.

3 THE COURT: -- your changes deal with that.

4 But I am very concerned about management acting as if the  
5 loans that the direct lenders have are loans in which he is not  
6 merely the servicer, but managing a fund.

7 In other words, many of these motions talk about we've got  
8 to make these loans, and we've got to do all these things to,  
9 in essence, balance it all out, make all the money come back,  
10 not just balance it out inter se, but to get more money into  
11 the estate, so then we can pay other people.

12 The problem is that these are all direct -- at least  
13 vis-a-vis Commercial Mortgage and the direct lenders, each  
14 person has their own interest in a deed of trust which is going  
15 to rise or fall on where that deed of trust is.

16 Now, there's going to have to be truing up as between the  
17 people who receive money, and it seems to me that the debtor,  
18 the debtor's management, Mr. Allison, is not in a position to  
19 say we've got to give a new advance on this loan if the lenders  
20 in that loan don't agree with that analysis, and that's what  
21 troubles me.

22 MS. JARVIS: And the --

23 THE COURT: And I'll let you argue it, but that --

24 MS. JARVIS: Yeah. I --

25 THE COURT: Just come out right now.

1 MS. JARVIS: No. I understand that issue.

2 THE COURT: I mean, it's --

3 MS. JARVIS: And that is --

4 THE COURT: For example, I --

5 MS. JARVIS: -- an issue we --

6 THE COURT: I telegraphed to Ms. Davis last week --  
7 not telegraphed. I guess I shouted to Ms. Davis and Ms. Chubb  
8 last week my concerns in the sense of the colloquy we had.

9 I want you to have the advantage of that thinking right  
10 now such that during this hour break you could, A, either have  
11 a chance to explain that to me or if all those oppositions have  
12 gone away maybe that makes a difference.

13 And I gather there's still oppositions to the direct  
14 lending. Is that --

15 MS. JARVIS: And that --

16 THE COURT: -- a fair --

17 MS. JARVIS: That issue actually is not being  
18 approved today. We're just explaining how it ties, you know,  
19 to what we're asking for to be approved for today.

20 And this is an issue we have thought about. It is an  
21 issue that I will have Mr. Allison address in his  
22 testimony --

23 THE COURT: Okay.

24 MS. JARVIS: -- as well.

25 MS. DAVIS: I don't mean to interrupt, but my client

1 is very concerned about me staying at these proceedings any  
2 longer than I need to.

3 Based upon counsel's presentation, are we still going to  
4 go forward with the forbearance and funding motion this  
5 afternoon?

6 MS. JARVIS: Yeah.

7 THE COURT: And I have no problem if we go through  
8 with that first. I mean, I understand. I --

9 MS. JARVIS: Yeah. And as long as --

10 THE COURT: Because I --

11 MS. JARVIS: As long as --

12 THE COURT: And on one hand, I think the forbearance  
13 motions need to go first -- not the forbearance, but the loan  
14 motions need to go first --

15 MS. DAVIS: I agree.

16 THE COURT: -- because if there is no need for a loan  
17 there's no need for DIP financing.

18 MS. DAVIS: I agree, your Honor. I just wanted to  
19 make sure I needed to come back.

20 THE COURT: Yeah.

21 MS. DAVIS: Thank you. Sorry.

22 MS. JARVIS: Yeah.

23 THE COURT: I mean, I assume --

24 MS. JARVIS: And you --

25 THE COURT: -- you would not resolve --

1 MS. JARVIS: Yeah.

2 THE COURT: -- your problems.

3 MS. JARVIS: And, you know, your Honor, we can go --  
4 I mean, we can do the forbearance motion first. We just need  
5 to make sure we have time to get the DIP-financing motion --

6 THE COURT: Oh --

7 MS. JARVIS: -- heard.

8 THE COURT: -- we're going to stay until we get  
9 everything done today.

10 MS. JARVIS: Okay. Okay. Because that's just, you  
11 know, that -- that's why we asked to get it done because we  
12 didn't know how much time --

13 THE COURT: No.

14 MS. JARVIS: -- your Honor had.

15 THE COURT: No. I --

16 MS. JARVIS: And --

17 THE COURT: My problem went away, and we can stay  
18 'til we get it done.

19 MS. JARVIS: Okay.

20 THE COURT: And like I said, the only reason I have  
21 to break is I've got -- I haven't had a break, and then I have  
22 2:00 o'clock scheduling conferences, and I've got like  
23 40 matters on that I have to deal with.

24 MS. JARVIS: Okay.

25 THE COURT: So --

1 MS. JARVIS: Let me just go down through a few other  
2 clarifications. The Direct Lenders Committee or the  
3 Executory Contracts Committee were concerned that there was a  
4 lien being granted on their funds in the Collection Account.  
5 That's not the case. That, you know, can be clarified. That  
6 was never intended.

7 There also is with respect to an automatic prepayment  
8 provision. During the interim, that also will not be in  
9 effect.

10 And, of course, it really can't be in effect because any  
11 loans that are collected are going to be going in the  
12 Collection Accounts.

13 We don't have -- we're not distributing anything until  
14 August -- we request the Court to allow us to do it on  
15 August 4th, anyway.

16 Those, you know, proceeds of the loans of the funds that  
17 would be collateral would, of course, be subject to, you know,  
18 the lien, but there would be no automatic prepayment of that.

19 There would be no lien on avoidance actions in this  
20 interim period or on any inter-debtor receivable, so that also  
21 is an improvement that we've negotiated with the lender and  
22 with the assistance of the committees or input of the  
23 committees.

24 We have the payoff amount. If it's not granted on a  
25 permanent basis on the 25th, we have also bargained for it not

1 becoming due that day, but to give us five business days to go  
2 ahead and pay back whatever the advances were up to that point  
3 in time.

4 They have agreed, the DIP lender has agreed, that part of  
5 this money can be used to fund the \$125,000 Boise/Gowen loan  
6 which is the subject of the other motion that's on today if the  
7 Court grants that as well.

8 The debtor has agreed also to give the committees, all  
9 four of the committees, weekly reporting comparing budgeted  
10 amounts to actual use of cash. I think that addresses --

11 THE COURT: Okay. Let --

12 (Colloquy not on the record.)

13 THE COURT: Let me kind of also clarify my concerns I  
14 want you to focus on and procedures. The two questions I had  
15 were why do we need the money which --

16 MS. JARVIS: Yeah.

17 THE COURT: -- I've sort of intimated and then,  
18 secondly, what exactly would the liens attach to, and that's  
19 kind of the ambiguity because of -- and you may well have  
20 addressed it in your clarifications.

21 And when I say why do we need the money, let me indicate  
22 -- and I certainly don't mean to substitute my business  
23 judgment because that's not my role.

24 But I certainly see the idea of having a funding source  
25 out there, but it seems to me that the funding source -- there

1 should be a procedure by which you ask the entities that have  
2 the particular loan this is what's happening. We have a loan.  
3 Do you consent?

4 And if so, the loan can be immediately paid. I'm sorry.  
5 The transaction can immediately be consummated whether or not  
6 -- maybe with or without a hearing.

7 But what I'm not hearing is that intermediate step of the  
8 procedure. It's sort of a reverse procedure. In other words,  
9 what do the particular lenders on this loan want to do.

10 And if they want to do it, it's great because you have now  
11 provided with them for the ability to do that and for which  
12 they can be charged against their loan to the extent that their  
13 loan, their money, benefitted, the same way if you go to  
14 foreclose.

15 If you go to foreclose, the documents make it quite clear  
16 that they are ultimately liable for the expenses in collection  
17 which can be done through an offset between what you finally  
18 collect.

19 And so what I'm concerned about is -- you know, the  
20 original thing was there's certainly the idea of collectivism.  
21 I think that the parties need to work together to do it.

22 But we can't shift over into, in essence, a communism. We  
23 can't shift over to say just because you have it and I should  
24 have it because it's right and good doesn't mean that's going  
25 to happen. Each entity has their own rights, and that's the

1 thing that I'm concerned that's been lost focus.

2 Again, if this was nothing more than the funds that we  
3 have, this approach would work perfectly because the funds --  
4 people are members in the funds.

5 They don't have any direct interests or if you're an  
6 indenture trustee, but that's not the case for 3600 of these, a  
7 number of these loans, so that's my concerns.

8 We'll come back at 2:30. What I'd want to do first when  
9 we come back at 2:30 is -- well, let's just take the Canepa  
10 motion. It's only 125,000, and then that way Ms. Davis will be  
11 free, and then the money is lent or it's not lent.

12 MS. DAVIS: No, your Honor. I have to sit through  
13 the DIP motion, anyway.

14 THE COURT: Oh, okay.

15 MS. DAVIS: So I don't want to --

16 THE COURT: It doesn't make any difference?

17 MS. DAVIS: It doesn't make any difference. I just  
18 wanted to make sure I had to stay.

19 THE COURT: Okay.

20 MS. DAVIS: Thank you.

21 THE COURT: All right. Great. I've helped  
22 everybody's billable time out today, so --

23 MS. DAVIS: I appreciate that.

24 Thank you.

25 THE COURT: Okay. All right.

1 (Colloquy not on the record.)

2 THE COURT: So we'll be back at 2:30.

3 Thank you.

4 MS. JARVIS: Thank you, your Honor.

5 THE CLERK: All rise.

6 (Recess at 01:32:11 p.m.)

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1 I certify that the foregoing is a correct transcript  
2 from the electronic sound recording of the proceedings in  
3 the above-entitled matter.  
4  
5

6 /s/ Lisa L. Cline

10/21/10

7 Lisa L. Cline, Transcriptionist

Date